Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Biennial Review 2002 – Review of Telecommunications Regulations Within the Purview of the International Bureau	IB Docket No. 02-309

COMMENTS OF INTELSAT LLC

Intelsat LLC ("Intelsat") is pleased to submit the following comments in response to the above-captioned Public Notice ("Notice").[1] In the *Notice,* the Federal Communications Commission ("FCC" or "Commission") seeks comment on regulations within the purview of the International Bureau that should be repealed or modified because they are no longer in the public interest, or changed in order to "enable the Commission to operate more efficiently and effectively."[2] In the FCC's ongoing proceeding to streamline its satellite licensing process, Intelsat and the Satellite Industry Association ("SIA") (in whose comments Intelsat partially joined) each suggested a

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[1] *See Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the International Bureau,* FCC 02-263 (rel. Sept. 26, 2002) (Public Notice).

[2] *Id.*

number of Part 25 rule modifications that would improve those procedures.[3] Specifically, those comments recommended that the agency:

- Adopt a new rule permitting operators of multiple satellites to move satellites between authorized and coordinated orbital positions following notification to the Commission and other affected licensed spectrum users;[4]
- Adopt its proposal to deem satellite replacement applications granted after a specified period of time and extend this "deemed granted" procedure to satellite license modification applications;[5]
- Codify and streamline the process for requesting and issuing grants of Special Temporary Authority;[6]
- Eliminate rules requiring unnecessary technical disclosures in satellite applications and eliminate the requirement in Section 25.210(a) of the rules that requires C-band satellite operators to employ orthogonal linear and switchable polarization on a transponder basis;[7]
- Require electronic filing of satellite applications and letters of intent;[8] and

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[3] *See Comments of Intelsat LLC*, IB Docket Nos. 02-34 and 00-248 (filed June 3, 2002) ("*Intelsat Comments*") (attached as Exhibit A) filed pursuant to *Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Provisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* FCC 02-45, 17 FCC Rcd 3847 (2002) (Notice of Proposed Rulemaking and First Report and Order); *Comments of the Satellite Industry Association*, IB Docket Nos. 02-34 and 00-248 (filed June 3, 2002) ("*SIA Comments*") (attached as Exhibit B) filed pursuant to *Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Provisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations,* FCC 02-45, 17 FCC Rcd 3847 (2002) (Notice of Proposed Rulemaking and First Report and Order).

[4] *SIA Comments* at 20-21.

[5] *Intelsat Comments* at 21-23.

[6] *SIA Comments* at 21-22.

[7] *Intelsat Comments* at 23-25.

[8] *SIA Comments* at 18-19.

- Revise its rules to renew automatically licenses for satellite networks authorized for ten-year terms for an additional five years.[9]

Intelsat's and SIA's comments (attached herein as Exhibits A and B) provide a full description of these proposals. Adoption of these recommendations will serve the public interest by enabling the Commission to "operate more efficiently and effectively," by expediting service to the public, and by eliminating unnecessary regulatory burdens to licensees. Therefore, Intelsat respectfully urges the Commission to adopt in this biennial review rule changes consistent with the above recommendations.

Respectfully submitted,

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October 18, 2002

[9] *SIA Comments* at 22.

EXHIBIT A

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies	IB Docket No. 02-34
2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	IB Docket No. 00-248

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2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	IB Docket No. 00-248

COMMENTS OF INTELSAT LLC

Intelsat LLC ("Intelsat"), by its attorneys, is pleased to submit these comments[1] in response to the above-captioned Notice of Proposed Rulemaking ("*Notice*"), in which the Federal Communications Commission ("FCC" or "Commission") seeks to expedite its satellite licensing process.[2]

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1 Intelsat also joins the comments filed by the Satellite Industry Association ("SIA"). As explained in these comments, Intelsat agrees with SIA that the Commission's proposal to revise the current processing round licensing approach is preferable to the particular first-come, first-served ("FCFS") proposal described in the *Notice*. However, Intelsat further believes that the adoption of the "Modified FCFS" licensing methodology proposed in these comments would better serve the FCC's objectives than either of the options set forth in the *Notice*.

2 *See Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Provisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, FCC 02-45, 17 FCC Rcd 3847 (2002) (Notice of Proposed Rulemaking and First Report and Order) ("*Notice*").

I. INTRODUCTION AND SUMMARY

This rulemaking was prompted by the recognition that U.S. licensing of orbital locations and spectrum for satellite communications services now "can take several years."[3] Intelsat shares the Commission's concern that such licensing delay imposes economic costs on society, risks non-compliance with ITU procedures, and allows scarce spectrum to lie fallow.[4] Intelsat also agrees that the existing satellite licensing process—once appropriate—may no longer be best "suited to the technologically advanced, new satellite services of today."[5] Thus, Intelsat welcomes the Commission's dedication "to improving its procedures" and appreciates the opportunity both to comment on the reform proposals set forth in the *Notice* and to offer additional streamlining measures.[6]

The *Notice* sets forth two options for revising the current satellite licensing procedure—first-come, first-served ("FCFS") or reform of the existing processing round procedure ("processing reform"). In selecting between these two streamlining approaches, Intelsat counsels the Commission to strive to balance the benefits of expedited service to the public and the dangers of unjust enrichment and speculation. Intelsat believes that the FCFS approach as set forth in the *Notice* is fatally flawed in its failure to deter adequately the filing of purely speculative applications. Furthermore, although current processing round policies can be reformed and streamlined, the FCC's proposed reforms still could result in considerable regulatory delay absent additional modifications and clear time frames for applicant and FCC action. Thus, while reformation of the processing round policies would be preferable to the

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3 *Notice*, ¶ 11.

4 *Id.*

5 *Id.*

6 *Id.*

agency's FCFS option, Intelsat proposes herein a "Modified FCFS" approach, which, if adopted in its entirety, would be preferable to either of the streamlining options as described in the *Notice*.

Specifically, Intelsat recommends adoption of a "Modified FCFS" licensing procedure that: (i) establishes a queue and processes applications in the order received; (ii) covers only new licenses with established service rules and frequency allocations (*e.g.*, geostationary satellite orbit ("GEO") fixed satellite service ("FSS") in C, Ku and Ka); (iii) is not employed where sharing is based on band segmentation (*e.g.*, mobile satellite services ("MSS")); (iv) requires evidence of a $10 million bond at the time of filing an application; (v) permits "second-in-line" applicants to shift to otherwise available orbital locations; (vi) results in license grant or denial for the first applicant within 90 days; and (vii) permits applicants or license holders to transfer their applications or authorizations to other qualified applicants, but only at cost (mirroring the current policy in the Broadcast arena). If the Commission adopts this "Modified FCFS" procedure, it should also continue to enforce strenuously its milestone policy.

Implementation of these recommendations *as a whole* will serve the public interest by inserting greater speed and certainty into the agency's satellite licensing processing. However, implementation of FCFS without the safeguards that Intelsat proposes could impair satellite licensing—the result might be a surge in filings by unqualified applicants and/or speculators. This would not serve the public interest in ensuring continued investment in satellite infrastructure and the availability of satellite capacity. Thus, Intelsat favors its "Modified FCFS" only if adopted and applied as a package.

Eliminating procedural delays in initial satellite licensing would be a desirable reform. But, beyond that, the current process unintentionally introduces regulatory roadblocks even after

a spacecraft is launched and operating. No streamlining proposal would be complete without addressing those procedural obstacles. Intelsat thus also proposes an additional post-launch streamlining measure—a "deemed granted" or "grant stamp" procedure for approving satellite license modification applications. This procedure would be similar to that suggested by the FCC for replacement satellites, which Intelsat fully supports.

Intelsat's proposed "Modified FCFS" procedure and "deemed granted" approval for modification and replacement applications will reduce the strain on FCC resources—in part by weeding out speculative applications—that comes from selecting among mutually exclusive applications and preparing written orders for routine system changes. Adoption of these measures would also ensure that regulatory review does not impose an artificial impediment to legitimate satellite operators meeting International Telecommunication Union ("ITU") bring into use deadlines and the needs of consumers. In addition, the streamlined licensing supported by Intelsat will also further the FCC's efforts to allow the market, not regulation, to determine the successful provision of communications services to the public.[7] Most importantly, Intelsat's proposal for "Modified FCFS" licensing should result in increased innovation and funding of new satellite services and thus promote new and faster initiation of service to the American public.

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[7] *See, e.g., Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd 22167 (Int'l Bur. 2001) (Report and Order) ("*Cable Landing License Streamlining Order*"); *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, 14 FCC Rcd 4909 (Int'l Bur. 1999) (Report and Order) ("*Section 214 Streamlining Order*").

II. INTELSAT SUPPORTS THE FCC'S DECISION TO REDUCE EXISTING LICENSING DELAY FOR ORBITAL LOCATIONS AND SPECTRUM

Intelsat concurs with the *Notice's* recognition that the current processing round system has resulted in long delays in the licensing of new satellite systems.[8] For example, issuance of licenses in the second processing round for low earth orbit ("Little LEO") systems took five years,[9] the processing round for "Big LEO" systems lasted four years,[10] and even though the FCC awarded licenses in the first Ka-band processing round in three years, milestone obligations were not imposed for an additional three years.[11] More recently, the second Ka-band GSO processing round lasted for four years and ultimately concluded with the FCC implementing its own plan for allocating orbital locations.[12] Finally, applications filed in December 1997 for second round Ka-band NGSO satellite licenses are still pending.[13]

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8 *Notice*, ¶ 11.

9 *See, e.g., Final Analysis Communications Services, Inc.*, 13 FCC Rcd 6618, 6619-20 (Int'l Bur. 1998) (Order and Authorization).

10 *See, e.g., Boeing Co.*, 16 FCC Rcd 13691 (Int'l Bur. 2001) (Order and Authorization).

11 *See, e.g., GE American Communications, Inc., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service,* 12 FCC Rcd 6475 (Int'l Bur. 1997); *GE American Communications, Inc., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service,* DA 01-225, 16 FCC Rcd 2461 (Int'l Bur. 2001) (Order and Authorization).

12 *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band,* DA 01-1693, 16 FCC Rcd 14389 (Aug. 3, 2001) (Order).

13 *Satellite Policy Branch Information, Satellite Applications Accepted for Filing in the 18.8-19.3/28.6-29.1 and 19.7-20.2/29.5-30 GHz Bands; Cut-off Established for Additional Applications in the 18.8-19.3 and 28.6-29.1 GHz Bands,* Report No. SPB-105, DA 97-2201 (Oct. 15, 1997) (Public Notice) and *Satellite Applications Accepted for Filing in the Ka-band; Cut-off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7-18.8 GHz, and 19.3-20.2 GHz Frequency Bands*, Report No. SPB-106, DA 97-2202 (Oct. 15, 1997) (Public Notice) (setting a "cut-off" date of December 1997 for Ka-band applications); *Satellite Policy Branch Information, Ka-Band Applications Accepted for Filing*, Report No. SAT-00012 (Mar. 16, 1999) (Public Notice).

In the *Notice,* the FCC recognizes that these licensing delays have imposed economic and administrative costs on consumers, satellite providers and the Commission. Indeed, the *Notice* estimates that the cost of a two-year delay in licensing is approximately $1.5 million per $1 million in expected annual benefits for a system that would come into service five years after licensing.[14] Intelsat also agrees that good spectrum policy demands completion of licensing as soon as possible in order to expedite the use of spectrum resources by licensees or the reassignment of spectrum returned to or reclaimed by the Commission. Recent revisions in ITU procedures further highlight the need for a faster licensing procedure. For all these reasons, the FCC's initiative to streamline the licensing process will serve the public interest in ensuring a reliable and long-lasting supply of satellite services.

III. A "MODIFIED" FIRST-COME, FIRST-SERVED PROCESS WILL BEST SERVE THE FCC'S POLICY GOAL OF EXPEDITING SERVICE TO THE PUBLIC

The FCC's goal of expediting the process for licensing orbital locations and satellite spectrum, and thus service to consumers, may be best achieved by replacing the current processing round approach for certain bands and services with a "Modified FCFS" approach. In contrast, the FCFS approach set forth in the *Notice* could actually slow and prolong satellite licensing (and therefore potentially delay service to the public). This is because the FCC's proposal is insufficient to deter filing by speculative and unqualified applicants interested either in blocking legitimate applicants or selling their place in line. Any streamlining reform must be crafted to reduce—as much as feasible—the potential to misuse procedural rules to serve private, not public, interests.

Moreover, the processing round reform proposed by the Commission may not adequately address the elements that have caused past delays in application processing, unless modified to

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[14] *Notice*, ¶ 14 n.13.

include well-defined time frames for applicant settlement and FCC action. For example, the Commission's revised processing round proposal shortens, but does not eliminate, spectrum- and orbital-sharing negotiations among applicants,[15] fails to address fully the delays associated with processing multiple applications with multiple frequency requirements and, ultimately, lists only vague, conflicting—and, in some cases, anticompetitive—criteria for selecting among qualified applicants.[16] Nevertheless, as between the two streamlining options set forth in the *Notice*, Intelsat would prefer the Commission's proposed processing round reform. Overall, however, Intelsat believes that modification of the FCFS proposal to include anti-speculation safeguards might best achieve the Commission's public interest objectives.

Intelsat's Modified FCFS proposal shares some basic components of the FCFS approach set forth in the *Notice*. The Commission would accept and process a lead application for an orbital location or spectrum and include subsequently filed mutually exclusive applications in a queue according to filing date and time. The FCC would accept comments on the lead application, dismiss it if grant would not serve the public interest, and then process the next

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15 *Notice*, ¶¶ 67-83. While the Commission's alternative proposal, a mandatory-sharing mechanism, would eliminate those negotiations, mandatory sharing may not be appropriate for all bands.

16 For example, the proposal to favor "new entrants" contradicts the proposal to give a "preference to applications who have made more progress toward providing service." *Notice*, ¶¶ 71 &3. Both of these criteria are also subjective. Notably, the determination of whether an applicant qualifies as a "new entrant" will require the adoption of an affiliation standard and close scrutiny of corporate relationships. Similarly, the Commission's inquiry into and comparison of various applicants' stage of development of their proposed satellite systems would add complexity and time to the Commission's licensing deliberation. Moreover, the FCC's proposal to disfavor applicants that previously missed a milestone would unfairly penalize an applicant for a business decision unrelated to the current application. *Id.*, ¶ 72. Similar to the proposed "new entrant" criterion, the Commission would also have to evaluate whether the milestone failure of one company should be attributed to an applicant with related ownership. Finally, the Commission's proposal to favor applicants committed to serving "rural or unserved" areas makes no sense when applied to geostationary FSS satellites, which by their very nature can serve rural and unserved areas of the continental United States. *Id.*, ¶ 74. To the extent that the Commission intended to require the deployment of systems capable of serving Alaska and Hawaii, it would be inconsistent with FCC policy and also, in many cases, technically infeasible.

application in the queue.[17] However, Intelsat's Modified FCFS proposal adds the following measures designed to strike the appropriate balance between processing speed and regulatory predictability:

- Applies only to new licenses for orbital locations and spectrum with established service rules and frequency allocations (*e.g.*, C, Ku and Ka) but not to services where band-segmentation is a preferable sharing method (*e.g.*, MSS);
- Requires applicants to provide evidence of a $10 million bond with each application;
- Requires applicants to file electronically;
- Requires license grants (or denials) within 90 days of an application;
- Permits second-in-line applicants some options ("partial fungibility") in their selection of orbital locations;
- Allows transferability at cost of licenses and pending applications; and
- Strenuously enforces milestone obligations.

These additional elements will result in an FCFS licensing procedure that offers licensing certainty, prompt issuance of licenses and expeditious delivery of service to the public. If FCFS licensing is adopted without any of these elements, the filing of blocking or speculative applications likely would outweigh the benefits of speed and certainty. As a whole, however, Intelsat believes that Modified FCFS will serve the FCC's goals better than the revised processing round approach proposed in the *Notice* because it directly addresses those elements of processing rounds that are responsible for delays. In particular, this Modified FCFS approach eliminates the two most significant sources of delay in processing rounds—negotiations between applicants on the sharing of spectrum and orbital locations and, when those fail, FCC assignment of particular applicants to particular slots.[18] It also eliminates the time period between the filing

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17 *Notice*, ¶ 33.

18 *Notice*, ¶ 10.

of a lead application and the cut-off date for competing applications, during which time no application is processed under the current processing round system. Therefore, Modified FCFS will enable the FCC to process applications more quickly, minimize the Commission's administrative costs,[19] and thus speed service to the American public.

A. Modified FCFS Should Be Limited to New Licenses in "Established" Services and Bands Not Shared Via Band Segmentation

Intelsat recommends that the Commission apply Modified FCFS licensing only for "new" licenses in "established" services and bands not shared via band-segmentation. For this purpose, a service and band would be "established" if the FCC has already both adopted service rules and made a frequency allocation. As the Commission adopts new frequency allocations and service rules, the number of services and bands that are "established" and thus eligible for the Modified FCFS approach would increase. Adoption of "generic" or "default" service rules would, of course, also increase the class of applications eligible for Modified FCFS.[20] A "new" license would be defined to exclude an application for a replacement satellite or modification application, which are not currently subject to processing rounds and thus do not experience the delays associated with new space station applications. Applying this standard today, the Modified FCFS approach would be available for applications in the geosynchronous earth orbit fixed-satellite service ("GEO FSS") in the C, Ku and Ka bands.

However, Modified FCFS should not apply where the agency already divides spectrum resources based on "band segmentation," rather than orbital location. For example, Modified FCFS should not apply to new licenses for mobile satellite services ("MSS") and possibly non-

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19 *Id.*, ¶¶ 40-41.

20 The Commission's recently adopted service rules (*e.g.*, 2 GHz and NGSO Ku-band) share many features in common with earlier adopted service rules (*e.g.*, "Big LEO") and thus the

geostationary satellite orbit ("NGSO") satellites. In these situations, Modified FCFS may not significantly expedite licensing because spectrum-sharing negotiations, which constitute the most significant source of processing round delay, either are absent or brief.

By limiting Modified FCFS to "established" services and bands, the Commission will achieve its goal of expediting licensing and still facilitating innovation.[21] Were the FCC to apply Modified FCFS to new bands, it might place the entire burden of championing a new service allocation and service rules on the first applicant. This could unintentionally undermine any streamlining benefits and slow development of new satellite services and bands, hampering provision of new and innovative services to the public. In addition, implementing Modified FCFS only for bands with a frequency allocation and service rules will obviate the need to file a conforming application or to modify an application to accommodate multiple satellite systems.

B. The Commission Should Require Applicants to Execute a $10 Million Bond

The FCC should be extremely cautious about any streamlining that increases incentives to file blocking or speculative applications. Under the current process, and even with the FCC's proposed FCFS, some applicants may be more interested in slowing other service providers than actually investing in satellite infrastructure. Moreover, the FCC should be careful to avoid creating opportunities for unscrupulous entities to profit from process or to "greenmail" legitimate operators into "buying out" applicants that never seriously contemplated providing service to the public.

(Continued . . .)
Commission could consider forming a list of "generic" service rules that would apply to all new satellite services.

21 *Notice*, ¶ 1.

That the FCC's proposed FCFS process includes insufficient pecuniary protections against such abuse of its rules. Plainly, current application fees alone are too low to deter entities from filing blocking or speculative applications. Therefore, in addition to the standard Section 8 Application Processing Fees (currently $93,375.00 for a single geostationary orbit satellite), Intelsat proposes that the FCC require each applicant for a new space station to submit, with its application, evidence that it has executed a bond in the amount of $10 million that will come into effect upon license grant.[22] The Commission should also impose a license condition that requires payment of the bond to the U.S. Treasury upon license revocation (for example for failure to satisfy milestones) provided that, at the time the license is revoked, the licensee has not incurred ten percent of the costs of building and launching its licensed satellite.[23] If the licensee has spent such amount, however, the bond would expire.[24]

This $10 million amount would be sufficient to discourage speculative applications, but should not pose a hurdle to legitimate applicants including new entrants. This is because the

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[22] Based on Intelsat's experience, the form of the bond proposed here should not pose an unduly complicated obstacle for qualified applicants.

[23] The Commission has the authority to impose license conditions; however, an applicant may reject the license as conditioned within 30 days. 47 C.F.R. §1.110; *Central Television, Inc. v. F.C.C.*, 834 F.2d 186, 190 (D.C. Cir. 1987). As a matter of public policy, conditioning the license in this way will deter frivolous and speculative applications and no FCFS should be adopted absent such protections. There may remain a question, however, as to whether such license condition is consistent with the Commission's statutory authority. Intelsat urges the FCC to resolve any such questions before adopting FCFS. *Cf.* 47 U.S.C. § 154(i) (authorizing the FCC to "perform any and all acts, ... and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions").

Because some satellite operators are affiliated with satellite manufacturers, however, the Commission should continue its requirement that affiliated companies negotiate contracts at arms' length and may also need to inquire as to whether the expenditure towards satellite construction and launch was bona fide. Additionally, in the case of affiliated manufacturers and licensees, the FCC should require any efforts by manufacturers in mitigation—by, for example, re-selling the under-construction satellite—to post date the missed milestone.

bond will only be paid to the U.S. Treasury if a licensee does not make a good faith effort to proceed with the construction of its satellite, which is clearly evidenced by its failure to expend even 10% of the costs of building and launching that satellite (which would be $22.5 million for a geostationary orbit satellite).[25] This $10 million amount is also sufficiently large to deter bad faith filings that the Commission need not prohibit applicants that miss a milestone from pursuing another license. Furthermore, because Intelsat proposes that Modified FCFS licensing only apply to "established" services, the $10 million bond will not apply to, and thus not deter the filing of, applications that require unavoidable, but time-consuming, adoption of service rules or frequency allocations.

C. Intelsat Supports Electronic Filing, Priority Based on Filing Date and Time, and No "Filing Windows"

Intelsat supports the FCC's proposals to mandate electronic filing of applications and to establish priority on the date and time of filing[26] and agrees that the FCC should dismiss a first-in-time application if its filing fee is paid by a personal check that does not clear.[27] Intelsat also agrees that the FCC should only take action on the second application if it could not grant the first application. Thus, the Commission would not consider the merits of the second filed application or compare the public interest benefits of the first and second application.[28]

(Continued . . .)

24 Intelsat believes that this approach is different than, and preferable to, imposing a forfeiture for failure to meet a milestone because it is designed to deter bad faith filings not penalize legitimate entities with good faith intentions.

25 *Notice*, ¶ 112 n.148.

26 *Notice*, ¶ 118.

27 *Id.*, ¶ 94.

28 Intelsat believes that resolution of conflicts between mutually exclusive applications by date and time of filing is appropriate and consistent with *Ashbacker*. *Id.*, ¶ 63.

In addition, Intelsat supports the Commission's tentative conclusion not to establish a "filing window" if it adopts this proposed Modified FCFS approach.[29] Intelsat notes that the FCC currently "does not determine when to make an orbital location and associated frequency band available for licensing."[30] Rather the Commission "allow[s] the private sector to take the initiative in determining whether, and when, to file an application and for which satellite uses to apply."[31] There is nothing inherent to FCFS licensing that would require the FCC to deviate from its existing policy of allowing applicants' business determinations to dictate when applications are filed. Indeed, the ability to file an application at any time will add certainty and predictability to the Commission's licensing process. Moreover, if an applicant files for an orbital location or spectrum that is not currently available (because its business cost-benefit analysis supports getting in the queue for a license that can not yet be granted), the FCC could start a queue and process the first application only when a license can be granted. Thus, the filing of an application that cannot be granted immediately will not burden the Commission's limited resources. The Commission's acceptance of applications at any time (even if a slot is not currently available for licensing) also avoids the likelihood that multiple applications will be filed within a millisecond of being designated "available" by the Commission. Furthermore, to the extent that, absent a filing window, the Commission is concerned that a licensee on the verge of losing its license could gain an unfair filing advantage vis-à-vis other interested parties, the Commission could prohibit a licensee from reapplying for a lost license for a period of 30 days.

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29 *Id.*, ¶ 43.

30 *Id.*

31 *Id.*

In contrast, adoption of a "filing window" would not facilitate service to consumers. A likely consequence of establishing a "filing window" is that all interested parties will submit applications the first day of the filing window rather than filing the application on the basis of their own business needs and risk assessment. This results in unnecessary licensing delay as all interested applicants postpone filing their applications until the window opens. Furthermore, the likely result would be multiple simultaneous applications that overload the FCC's electronic filing system. A "filing window" will also greatly increase the risk of simultaneously filed and thus mutually exclusive applications.

D. Under Modified FCFS, The FCC Should Act On Applications Generally Within 90 Days

Intelsat also recommends that the Commission act on the first application received for an available orbital location or spectrum within 90 days. To meet this timeframe, Intelsat recommends that the Commission place the first-filed application for an available license on Public Notice within 10 days of filing[32] and provide the required thirty days for petitions to deny,[33] followed by ten days for oppositions and five days for replies.[34] The Commission would then have approximately 30 days to grant or deny the application or notify the applicant that additional time to review is needed. If, however, the orbital location or spectrum applied for is

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32 The FCC has already committed to place applications on Public Notice within ten days of filing and should continue this approach under Modified FCFS licensing. *See International Bureau to Streamline Satellite and Earth Station Processing*, Report No. SPB-140 (Oct. 28, 1998) (Public Notice). Intelsat recognizes that the ten day time frame might be difficult to meet if a filing fee is paid by personal check. Federal regulations require banks to make checks for more than $5,000 to be available for withdrawal no later than the seventh business day following the deposit date for local checks, and the eleventh business day following the deposit date for non-local checks. 12 C.F.R. §§ 229.12, 229.13. However, there should be no difficulty providing Public Notice within ten days if an applicant submits its filing fee by wire transfer, certified check or money order. Certified checks and money orders are guaranteed by the issuing financial institution. Uniform Commercial Code, § 3-409; 12 U.S.C. §4001(6).

33 47 U.S.C. § 309(d)(1).

34 47 C.F.R. § 25.154.

not currently available for licensing, the FCC could start an application queue and place the first application on public notice within 10 days after the orbital location or spectrum applied for becomes available. Similarly, the FCC could keep the second-in-time filed application in a queue and place it on public notice within 10 days of denying the first application or revoking the license granted to the first applicant.

Time Period	Action
Day 1	Application Eligible for FCFS Filed
Day 10	FCC Public Notice of Application
Days 11-41	Petitions to Deny or Comments
Days 42-51	Oppositions or Responses
Days 52-57	Replies
Days 57-90	FCC Review of Applications
Day 90	Grant or Denial

Congress and the FCC have established time periods for processing other types of applications with great success.[35] In this case, a 90-day period will provide sufficient time for the Commission to review applications if it excludes not yet established services and bands from FCFS licensing (thus obviating the need for frequency allocation or service rules proceedings), eliminates financial qualification requirements, and streamlines its technical information requirements (discussed in Section V below).

E. The FCC Should Adopt Partial Fungibility of Orbital Locations

Intelsat agrees with the FCC that a first-come, first-served approach necessarily requires the elimination of the current policy that many orbital slots are "fungible" and that the FCC may

[35] For example, the Commission currently uses time periods for the processing of Section 214 applications (14 days for streamlined; 90 days for non-streamlined); streamlined processing of cable landing license applications (60 days); petitions for a declaratory ruling to exceed the 25% benchmark under Section 310(b) (45 days streamlined; 60 days non-streamlined) and mergers (180 days). Congress has mandated a 90-day time period for the processing of Section 271 applications.

lawfully grant a licensee a slot different from that requested.[36] However, fungibility would continue to serve the public interest in specific, narrowly defined circumstances. Thus, the Commission should preserve a policy of "partial fungibility" to expedite further satellite licensing and to promote the availability of satellite services to the public.

Specifically, Intelsat proposes that the Commission provide any applicant that is second-in-line for an orbital location a one-time choice of remaining second at its applied-for slot or becoming first-in-line for any other slot that remains (or becomes) vacant while the FCC processes the first-in-line application for the contested orbital location. Similarly, if multiple applications are filed for two or more slots and one or more slots remain vacant, the Commission could offer the second-in-line applicant at each slot with multiple applications the option of being licensed in the vacant slot(s). Should more than one second-in-line applicant seek to become first-in-line for the vacant slot, the Commission could offer the vacant slot to the second-in-line applicant with the application filed first-in-time or require the applicants to enter into a sharing arrangement. If, however, multiple licensing/sharing is chosen, the Commission should first give each applicant the opportunity to return to its second-in-line status as its filed for orbital location rather than participate in the sharing arrangement for the vacant slot.

Allowing applicants the choice of shifting their second-in-line application to an alternate available orbital location will serve the public interest by increasing the speed with which available slots are assigned to interested entities. It also adds the possibility that an applicant seeking an orbital location will obtain one even if his application is filed subsequent to another

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[36] *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 84 F.C.C.2d 584, 601 (1981) (Memorandum Opinion and Order) ("[A]n applicant's request for a particular orbital location is not dispositive of what location will actually be assigned.").

entity. Furthermore, licensing orbital locations more quickly starts a milestone clock and thus promotes rapid and efficient use of spectrum. Finally, the flexibility afforded an applicant in selecting slots will enable it to fulfill its business plan more rapidly and thus better serve American consumers.

F. The FCC Should Allow Cost-Based Transfers of Licenses And Pending Applications

The Commission proposes to eliminate its "anti-trafficking" policy and thus allow applications or licenses to be transferred freely. Although Intelsat agrees with the Commission that the ability to sell a license quickly would provide many public interest benefits, it also believes that some additional measures may be necessary to deter the filing of speculative applications. As the *Notice* recognizes, a FCFS process with full license transferability raises speculation concerns.[37] For example, the inherent value of acquiring a "first-in-line" application could prompt applications by entities interested in acquiring and selling that now valuable right without any real intent to launch and operate a satellite, and thus waste time (and frequency/orbital resources) until the license ultimately is revoked for failure to meet milestones. Given that the initial milestone review occurs one year after licensing, combining first-come, first-served with unlimited transferability could waste approximately 18 months and actually retard the provision of satellite services to the public.

Intelsat recognizes that the need to expedite the licensing process and service to the public and the public interest benefits associated with prompt licensing outweigh the agency's unjust enrichment concerns, *if* adequate safeguards are present to prevent speculation. Thus, Intelsat recommends that the FCC allow applicants and licensees to transfer their pending

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37 *Notice*, ¶ 117.

applications (*i.e.*, their place in a queue)[38] and "bare" licenses (*i.e.*, a license without a constructed or partially constructed spacecraft), provided the transfer is based on cost. Such "costs" could cover fees associated with obtaining the license, including application fees and legal fees, as well as a licensee's expenditures thus far for system development. If the transfer of an application or license is cost-based, the Commission need not be concerned that entities will file applications solely to sell them for a profit.

This approach is identical to that already employed to streamlined application processing in the broadcast context. At present, when there are mutually exclusive applicants for new broadcast licenses, the FCC limits settlement payments for withdrawing an application prior to the hearing to legitimate and prudent out-of-pocket expenses incurred by the withdrawing applicant in prosecuting its application.[39] The agency also limits payments made by applicants to third parties in exchange for the withdrawal of a petition to deny in new licensing, modification, transfer, and assignment proceedings to the legitimate and prudent expenses of the petitioner.[40] By limiting settlements to expenses, the FCC prevents the filing of frivolous or "sham" applications and petitions designed to profit from the agency's procedures,[41] and "greenmail" filings designed to force buy-out payments.[42] Each approach is an abuse of the FCC's

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38 Thus, Intelsat opposes the agency's plan to treat mergers or transfers of control as major amendments resulting in the loss of queue priority. *Id.*, ¶ 56.

39 47 C.F.R. § 73.3525(a)(3). The rule does not apply to *bona* fide merger agreements.

40 47 C.F.R. § 73.3588(a).

41 *Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits*, 6 FCC Rcd 85, 85 (1990) (Report and Order) ("*73.3525 Order*").

42 *Id.*, 6 FCC Rcd at 86. *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3912 (1990) (Report and Order) ("*73.3584 Order*"). *See also Amendment of Part 22 of the Commission's Rules To Provide For Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 7 FCC Rcd 7183, 7185 (1992) (Third Report and Order and

procedures and applicant or licensee resources that the Commission already has declared to be outside the public interest. Preventing such abuses will aid in facilitating the public interest goal of offering new services to the public, because it expedites licensing by reducing non-bona fide applicants and spurious claims, thus reducing the complexity of the proceeding.[43] At the same time, however, this policy would not slow bona fide applications (including by new entrants) or the addressing of legitimate issues of applicant qualifications.[44]

In general, this more relaxed approach to transferability of space station licenses will serve the public interest by promoting prompt development and initiation of new satellite services. As stated in the *Notice*,[45] changes in market conditions or technology may make it most efficient for a licensee to sell a license to another party with a different business plan or more financial resources that will be better able to serve customers. Allowing applicants to transfer pending applications to new entities also will lower investment risk and enhance an applicant's ability to attract capital. As a result, new services will be funded and offered to the public more quickly.

G. The Commission Should Strenuously Enforce and Streamline Milestones

Under Intelsat's Modified FCFS procedure, Intelsat believes that the Commission should strenuously enforce milestones to prevent speculative applications and the warehousing of

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(Continued . . .)
Memorandum Opinion and Order on Reconsideration), *aff'd* 12 FCC Rcd 2109 (1996) (Further Memorandum Opinion and Order on Reconsideration) (the Commission's "proposed rule concerning payments for the withdrawal of pleadings will give the kind of reasonable encouragement which legitimate petitioners might need to raise issues affecting the public interest in particular proceedings with allowing 'greenmail' (i.e., excessive payoffs))."

43 *See 73.3525 Order*, 6 FCC Rcd at 85, 87.

44 *See id.*, 6 FCC Rcd at 85; *73.3584 Order*, 5 FCC Rcd at 3913.

45 *Notice*, ¶¶ 111-14.

spectrum. Historically, the Commission's milestone policy has supplemented its reliance on stringent license thresholds (such as financial qualifications) to ensure that spectrum is promptly put to use once licensed. Intelsat recognizes that the Commission largely has eliminated or minimized threshold applicant financial qualifications. Under such circumstances, strict milestone enforcement remains the best vehicle to ensure that licenses are not held by entities not capable or willing to put spectrum to use for consumers. Intelsat similarly supports the Commission's proposal to require license purchasers to comply with the milestones in the original license.[46]

Intelsat also supports the FCC's desire to streamline its enforcement of the construction commencement milestone. That milestone requires a licensee to enter into "a binding, non-contingent construction contract."[47] As the Commission notes, determining whether a contract is both binding and non-contingent "can require interpretation of construction contracts, and so can take time to administer."[48] Intelsat thus recommends that the Commission require licensees to certify under penalty of perjury that they have entered into a binding, non-contingent construction contract by the milestone date or provide a copy of the contract.[49] If the Commission requests submission of a contract for any reason, the rules should require a licensee to produce an unredacted copy of the contract, a redacted copy of the contract and a request for confidential treatment within 15 days.

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46 *Id.*, ¶ 116.

47 *Notice*, ¶ 105.

48 *Id.*, ¶ 105.

49 *See Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986) (Memorandum Opinion and Order) (noting that DBS licensees must submit either the relevant portions of their contracts to the Commission, or a sworn statement regarding the contents of the contract, verified by the satellite construction contractor).

To the extent that the Commission also adopts a Critical Design Review (CDR) requirement,[50] Intelsat urges the Commission to base each licensee's CDR time frame on the contract its negotiates with its satellite manufacturer. Under this approach, a licensee would notify the Commission of its contract deadline for CDR at the same time it certifies that it has entered into a non-contingent satellite construction contract. This approach would preserve a licensee's existing flexibility to negotiate for the construction of a satellite in a manner that best promotes that licensee's system development and provision of service to the public.

Finally, Intelsat opposes the FCC notion of prohibiting a licensee from applying for another satellite license in the same band or orbital location, whether permanently or for a limited number of years, if a milestone is missed.[51] That approach would deter entities from taking the risks required to provide satellite service to consumers and could unduly penalize entities that make legitimate business decisions to cease system progress. Moreover, under such circumstances, applicants that tried and failed already lose their license, application filing fee, system development costs and, in some instances, a bond and industry confidence. The public interest rarely would be served by permitting an entity that has already borne these costs an opportunity to try again but the FCC need not impose such a rule—the market itself will.

IV. THE COMMISSION SHOULD ADOPT A "DEEMED GRANTED" PROCEDURE FOR REPLACEMENT AND FOR MODIFICATION APPLICATIONS

Intelsat supports the Commission's proposal to deem replacement applications granted after a specified period of time[52] and urges the FCC to extend its proposed "deemed granted" procedure to satellite license modification applications. Specifically, Intelsat recommends that

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50 *Notice,* ¶ 105.

51 *Notice,* ¶ 106.

52 *Id.,* ¶ 120.

the Commission automatically, and without written order, grant both replacement and modification applications on the 30th day (effective the 31st day) following Public Notice, unless the FCC notifies the applicant that additional time is required to evaluate the application. Petitions to deny would not automatically remove an application from the "deemed granted" process but would provide the FCC a basis on which to notify the applicant that the agency requires additional processing time. Under this procedure, the FCC could issue periodic public notices identifying those replacements and modifications "deemed granted." Alternatively, the FCC could "grant stamp" replacement and modification applications within 45 days following the Public Notice.

To be eligible for streamlined processing under either the "deemed granted" or "grant stamp" procedure, an applicant should submit with its replacement or modification application a certification that the satellite will satisfy the Commission's technical requirements and is capable of operating within existing coordination parameters at the current or modified orbital location. In this respect, the FCC's recommendation that replacement satellites employ "technical characteristics consistent with those of the satellite to be retired"[53] is too narrow. To be eligible for streamlined treatment (grant stamp or deemed granted), the technical characteristics of any replacement satellite need not be precisely the same because that requirement would stifle serving customers with the most up-to-date technology.[54] In order to encourage technical innovation, the Commission should treat any replacement satellite as 'technically consistent' if it:

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53 *Notice*, ¶ 120.

54 The FCC itself has acknowledged this fact. *Id.*, ¶ 120 n.160.

- Only uses expanded frequencies within a band that is already authorized (*i.e.*, adding extended Ku-band frequencies to a satellite that already has Ku-band authority),
- Limits any changes to the coverage area to those that can be made within the Commission's rules, and any relevant coordination agreements, and
- Utilizes power levels, emissions characteristics and signal modulation techniques that, even if not identical with the satellite being replaced, could operate within the limits included in the Commission's technical regulations and any ongoing coordination agreements with other spectrum users.

Such a flexible approach would enable satellite operators to continue to provide services to their customers that is technically competitive with the offerings of terrestrial-based communications services. Adoption of this additional streamlining measure would serve the public interest by reducing the strain on FCC resources of preparing a written order. It would also provide greater licensing certainty to satellite operators that seek to enhance their service. As a result, the public will benefit from market-driven improvements in satellite services without waiting for additional regulatory review.

V. THE COMMISSION SHOULD ELIMINATE UNNECESSARY TECHNICAL INFORMATION REQUIREMENTS

Intelsat supports the FCC's desire to streamline the technical information submitted with applications for new satellite services.[55] The Commission's proposal to require applicants to file additional and more detailed technical information, however, is contrary to its objectives of streamlining satellite licensing and expediting service to consumers. To meet these objectives, Intelsat recommends that the FCC eliminate redundant or outdated rules and rely more broadly on the submission of ITU-required technical data and certifications. As shown below, the Commission's receipt of ITU data and certifications will permit it to "to protect against harmful

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55 *Notice*, ¶ 84.

interference to adjacent satellite systems"[56] and will facilitate the prompt delivery of service to consumers.

Intelsat recommends that the FCC eliminate rules that are redundant with ITU filing requirements. Currently, there is substantial overlap between Section 25.114(c) of the FCC's rules and the ITU information requirements set forth in Appendix S-4 of the Radio Regulations for advance publication and coordination of geostationary satellite networks. Thus, to streamline the burden on satellite operators to compile, and the FCC to review, technical information, Intelsat proposes that the Commission require satellite operators to submit ITU information in lieu of the redundant provisions of Section 25.114 of its rules.

Intelsat also suggests that the Commission could rely in many cases on certifications of compliance rather than review of detailed technical information. For example, there is no reason for the FCC to require an applicant to both "certify" its compliance with pfd limits and provide the underlying technical information to support that certification.[57] The satellite operators' certifications of compliance fully serves the public interest in obtaining radio services free from harmful interference.

In addition, Intelsat urges the Commission to eliminate the outdated requirement in Section 25.210(a) of the rules that requires C-band satellite operators to employ orthogonal linear and switchable polarization on a transponder basis. This rule was adopted two decades ago to facilitate sharing between satellites operating two degrees apart offering analog television. However, most television transmissions have now upgraded to digital technology. Given the decline of analog television, and the relative ease of coordinating digital signals, mandating

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56 *Id.*, ¶ 24.

57 *Notice*, ¶ 91.

satellite operators to employ orthogonal linear and switchable polarization has outlived its usefulness; there simply is no need to preclude any particular sharing solutions. Thus, Intelsat recommends that the Commission replace Section 25.210(a) of its rules, with a requirement that satellite operators coordinate with adjacent operators.

VI. CONCLUSION

In view of the foregoing, Intelsat encourages the FCC to adopt its proposed Modified FCFS licensing approach, establish a "deemed granted" procedure for modification and replacement applications and streamline the filing of technical information. These principles will expedite service to the public, reduce administrative costs to the Commission and licensees, and promote the public interest.

Respectfully submitted,

INTELSAT LLC

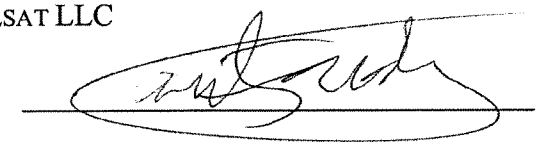
By: 

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EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Amendment of the Commission's Space Station Licensing Rules and Policies	IB Docket No. 02-34
2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	IB Docket No. 00-248

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

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SUMMARY

The Commission raises the possibility in its Notice of Proposed Rule Making ("*NPRM*") of abandoning its rules and policies for the licensing of satellite communications networks and replacing them with an untested first-come, first-served approach for assigning satellite spectrum and orbital positions. The Satellite Industry Association ("SIA") recommends against this approach. The Commission's existing satellite licensing approach is the product of three decades of effort to grant authorizations in a fair and efficient manner and it has been an important factor in the successful development of a competitive satellite communications industry, both in the U.S. and in other regions.

The Commission's use of processing rounds, combined with its licensing of space segment, has provided certainty and reliability to satellite operators, which has enabled them to provide services to consumers through the construction and operation of global networks. The Commission's use of processing rounds has helped to promote the creation of new satellite communications services by identifying a fixed pool of applicants that have an incentive to assist in the difficult and expensive International Telecommunication Union ("ITU") spectrum allocation process. By establishing a fixed applicant pool, processing rounds also enable the adoption of equitable solutions to the licensing of competing applications. Processing rounds also enable the Commission to promote the use of new technologies to maximize efficient spectrum use. Furthermore, processing rounds have had the practical effect of maximizing the number of independent competitive operators using spectrum because, in nearly every instance, the Commission has managed to complete its processing rounds by licensing all of the applicants.

In light of this success, SIA suggests measures to improve the current system rather than replace it as suggested in the *NPRM*. The Commission has recently adopted improvements to its licensing process, which have remedied some of the worst delays that occurred in the process during the late 1990s. SIA urges the Commission to adopt additional improvements, as discussed in these comments. For example, the Commission should reduce the time necessary to place new applications on public notice and promptly establish cut-off deadlines for new processing rounds when appropriate. The Commission should restrict periods for negotiation between pending satellite applicants. The Commission should also streamline certain of its other rules for satellite licensees, such as those for authorizing replacement satellites. This streamlining would have the additional beneficial result of freeing up Commission resources to address licensing and new service issues. In addition, the Commission should retain its anti-trafficking rules and its fungibility policy, both of which have recognized benefits for consumers and providers of satellite communications services.

The Commission should not, however, replace its current system with the first-come, first-served approach proposed in the *NPRM*. Adoption of this option would encourage speculation and inefficient use of spectrum, resulting in a significant retreat for the Commission from its statutory obligation to manage spectrum use in the public interest.

The Commission should also avoid adopting preferences for certain applicants that could delay the issuance of licenses and expose the Commission's licensing decisions to greater potential legal challenge. For example, subjective determinations regarding which applicants qualify as new entrants, or which are more committed to providing service to rural areas would only delay the issuance of licenses, thereby depriving consumers of the intended benefits.

Finally, the Commission should take steps to improve its milestone requirements for satellite licensees. Such improvements could help to reduce the average four year period between the time the Commission issues a space station license and when it revokes the license for failing to meet a milestone.

Most importantly, in considering improvements to its satellite licensing process, the Commission should take extreme care to ensure that any new rules or policies that are adopted do not compromise the Commission in its global leadership role in the development, successful licensing, and regulation of satellite communications services. While SIA supports the Commission in its goal of expediting the licensing of satellite communications networks, such improvements must not diminish the efficiency and equity that is the predominant characteristic of the current U.S. system.

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To: The Commission

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") hereby submits these comments pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. §1.415, and in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking and First Report and Order ("*NPRM*" or "*Order*") in the above referenced proceeding.[1]

I. INTRODUCTION

SIA is a national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies. SIA's member companies provide a broad

[1] SIA's members are: The Boeing Company; Globalstar, L.P.; Hughes Electronics Corp.; ICO Global Communications ("ICO"); Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; PanAmSat Corporation; SES Americom, Inc.; Teledesic Corporation; TRW Inc. and associate, non-voting member, Inmarsat. Teledesic and ICO did not, however, participate in the drafting of these comments.

range of products and services in the commercial satellite industry. Members include the recognized founders of commercial satellite communications, along with aspiring entrepreneurial companies seeking to provide new competitive services to consumers.

SIA serves as an advocate for the commercial satellite industry on regulatory and policy issues. SIA's diverse membership permits the association to present a unified voice of the U.S. commercial satellite industry. SIA is therefore uniquely qualified to provide to the Commission a consensus position on the important matters raised in this proceeding.

Introduced as an effort to "streamline" the Commission's satellite licensing process,[2] the Commission's *NPRM* raises the possibility of abandoning the current system and replacing it with an untested approach for issuing satellite spectrum assignments and orbital positions. The new alternative would constitute a significant, and unwelcome, retreat for the Commission from its statutory role as the regulator of the U.S. satellite communications industry. As described in the *NPRM*, licenses would be granted to any qualified applicant on a first-come, first-served basis without the use of adequate safeguards to prevent speculation, trafficking and inefficient use of spectrum resources.

The Commission's existing satellite licensing process is recognized throughout the world as a critical component in the successful development of the satellite communications industry. The success of the Commission's licensing approach is evidenced by the large number of U.S. licensed commercial satellites providing service to consumers not only to the United States, but also in other regions of the world.

While the Commission's licensing process has been successful, SIA agrees with the Commission that in recent years the processing of some applications and the completion of

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[2] *NPRM*, ¶ 1.

processing rounds for certain satellite services has been too protracted. While these delays may have hindered the timely deployment of service to consumers and impaired the satellite business,[3] they do not themselves constitute insurmountable problems that require jettisoning the system itself. SIA believes that rather than attempting to adopt the first-come, first-served option included in the *NPRM*, the Commission should simply improve the existing procedures for satellite application processing rounds.

Considerable evidence exists that the Commission's satellite licensing and orbital assignment process can be improved. In fact, some remedial measures have already been implemented and may have remedied some of the worst sources of delay that were experienced in the processing rounds of the 1990s. It may be too soon to quantify, however, the full extent of the resulting improvements.

In addition to the curative measures already implemented, further improvements can and should be undertaken. SIA recommends herein remedial measures that could improve the Commission's satellite licensing and orbital assignment process.

In evaluating proposals to improve the Commission's licensing process, however, extreme care must be taken to ensure that any remedial measures that are adopted do not undermine the Commission's critical worldwide leadership role in the promotion, licensing and regulation of satellite communications services. Any approach that champions expedience at the expense of effective and efficient licensing decisions would harm satellite service users and the public interest.

SIA therefore urges the Commission to employ considerable caution when considering any proposal, particularly proposals for radical change. After decades of development,

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[3] *See id.* ¶¶ 11-14, 21-22.

refinement and success, the Commission should improve the current system and reject the first-come, first-served approach included in the *NPRM*. The risk of this approach should not be borne by the commercial satellite industry and the public.

II. THE COMMISSION'S PROCESS FOR DEVELOPING NEW SATELLITE SERVICES AND ISSUING SATELLITE LICENSES IS THE SUCCESSFUL PRODUCT OF DECADES OF EFFORT AND SHOULD BE IMPROVED RATHER THAN REPLACED

The Commission's satellite licensing and regulatory process has been a critical component in the successful development of the domestic and international satellite communications industries. The Commission's licensing process was developed through decades of Commission experience with satellite industry regulation, experience that is not sufficiently acknowledged in the *NPRM*.

The Commission's licensing approach includes two major elements: (1) the licensing of space segment, in addition to earth stations, and (2) the use of processing rounds. The Commission's licensing of space segment is unique throughout much of the world. Some administrations issue licenses only for transmitting earth stations, leaving the coordination and "approval" of the space segment to the complex and lengthy ITU process.

In contrast, by licensing space segment, the Commission's approach provides satellite operators with regulatory reliability, legitimacy and relative expediency. Because of the increased certainty that is provided, Commission applicants include U.S. companies and, since the adoption of the World Trade Organization, Fourth Protocol on Basic Telecommunications Services ("WTO Basic Telecommunication Agreement"), non-U.S. companies seeking to serve consumers both within the United States and in other regions of the world.

The second major element of the Commission's licensing approach is the use of processing rounds to assign spectrum and orbital positions to multiple applicants. Since

initiating the use of processing rounds in 1970,[4] the Commission's licensing approach has proven successful in promoting the development of competition and efficient spectrum use. As discussed in the next section, processing rounds:

- enable the adoption of practical and equitable solutions to the licensing of multiple service providers,
- provide reasonable regulatory certainty for licensees considering expenditures of hundreds of millions of dollars for the construction of satellite communications networks,
- help to foster customized spectrum sharing approaches that are appropriately tailored for particular satellite services,
- increase the productive and efficient use of spectrum, and
- facilitate the development of new satellite communications services.

In light of the significant benefits that processing rounds contribute to satellite operators and their users, the Commission should take steps to improve the current licensing system rather than replacing it with the first-come, first-served approach in the *NPRM*.

A. The Commission's Use of Application Processing Rounds Provides Substantial Benefits in the Development and Licensing of Satellite Communications Networks

For the past three decades, the Commission has employed application processing rounds to assign licenses for hundreds of satellites and satellite networks. The Commission's use of processing rounds promotes competitive spectrum use, and enables the licensing of the greatest number of systems using limited spectrum and orbital resources. In every recent processing round, the Commission has successfully licensed all of the applicants.

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[4] *See Establishment of Domestic Communication-Satellite Facilities by Nongovernmental Entities*, 22 FCC Rcd 86, 98 (1970) (establishing, *inter alia*, a time period for the filing of applications by applicants who desire to have their proposals considered in conjunction with the first proposal).

For example, the use of processing rounds facilitates the licensing of multiple applicants through customized spectrum sharing approaches. Under the current system, the Commission has a variety of different means available to resolve potential mutual exclusivity in processing rounds for new satellite services.[5] For example, in the 2 GHz MSS proceeding, the Commission assigned separate frequency segments to each licensee,[6] while in the Ku-band NGSO FSS proceeding, the Commission adopted a spectrum sharing approach that permits each operator to operate across the entire band.[7] In the Big LEO proceeding, the Commission adopted a combination of two approaches – spectrum sharing for CDMA systems, and band division for the TDMA applicant.[8]

In contrast, under the proposal included in the *NPRM*, the Commission would automatically resort to band division to resolve mutually exclusive situations.[9] While band division may be appropriate for some satellite services in some situations, it is not the most efficient approach for all services or situations. Furthermore, this approach ignores the preferences of applicants, the development of more efficient plans for spectrum sharing, the

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[5] Furthermore, in the fixed satellite service ("FSS"), the Commission has used its fungibility policy to avoid mutual exclusivity.

[6] *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, IB Docket No. 99-81, 15 FCC Rcd 16127, 16138 (2000) ("*2 GHz MSS Order*").

[7] *See The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, Report and Order Further Notice of Proposed Rulemaking, FCC 02-123, ¶¶ 27-28 (April 26, 2002) ("*Ku-band NGSO FSS Service Order*").

[8] *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd 5936 (Oct. 14, 1994) ("*Big LEO Order*").

[9] *See NPRM*, ¶ 33.

impact of less than adequate spectrum assignments on applicants' business plans, and their ability to operate their proposed systems.

The existence of fixed applicant pools in processing rounds also promotes successful resolution of proceedings involving mutually exclusive applications. Fixed applicant pools facilitate negotiations on spectrum sharing solutions because they establish certainty regarding the relative standing of the various satellite system applicants. For example, in the first Little LEO processing round, the applicants developed a spectrum sharing plan, which the Commission adopted.[10] Additionally, in the Big LEO processing rounds, the applicants provided extensive technical information, which the Commission used to develop a spectrum sharing plan.[11]

Even when agreement cannot be reached among the applicants, the Commission can rely on a fixed applicant pool to help identify an equitable sharing approach for spectrum and orbital resources. For example, as discussed above, the Commission recently avoided mutual exclusivity in the 2 GHz MSS processing round by dividing the available spectrum between the pending applicants (a "total spectrum divided by 'n'" approach).[12] Such a solution may not be available without the use of a processing round. Without an established applicant pool, there is always the possibility that additional applicants may seek licenses in the near term, disrupting any agreement that was reached between the original applicants and the Commission.[13]

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[10] *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service*, Report and Order, 8 FCC Rcd 8450 (1993) ("*Little LEO Order*").

[11] *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd 5936 (1994) ("*Big LEO Order*").

[12] *See 2 GHz MSS Order* at 16138.

[13] *See NPRM,* ¶ 50 (observing that clearly defined rights helps to facilitate successful negotiations).

The use of processing rounds also creates an incentive for system proponents to develop and implement improved technology to increase the number of satellite systems that can operate in the same spectrum. For example, the Commission adopted a spectrum sharing approach in the Ku-band NGSO FSS proceeding that encourages licensees to utilize new techniques for satellite and earth station diversity to maximize efficient spectrum use in the Ku-band.[14]

Not only has the process proven to be fair and efficient, but it has also helped to promote the creation of new satellite communications services and greater competition, all of which benefits consumers. As the Commission has observed, the applicants in a processing round for a new satellite service frequently provide the U.S. Government with critical assistance in the complex and resource intensive (both in terms of manpower and expenditures) process of securing new international spectrum allocations.[15] In contrast, without the use of processing rounds, few applicants would have a reasonable assurance of receiving a license and, thus, an incentive to participate in the international allocation process.[16] This reduction of stakeholders in the international spectrum allocation process could reduce the likelihood that proposals for new

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[14] *See Ku-band NGSO FSS Service Order* ¶¶ 27-28.

[15] *See, e.g., Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking , 12 FCC Rcd 5754, 5783 (1997).

> We rely heavily on applicants to assist the U.S. in international fora to obtain spectrum allocations and we expect them to participate in the time consuming process of ITU notification and coordination. All of this activity requires significant expenditure of time and money by the applicants.

Id.

[16] Several of the subsequently filed applicants may have some expectation of receiving a license, but this expectation will likely be insufficient to justify the significant expense involved in pursuing a new international spectrum allocation.

satellite services will be successful in obtaining spectrum allocations in the international arena, potentially hindering U.S. future competitiveness in satellite services.

The use of processing rounds, particularly for new services, is also consistent with the Commission's cited precedent involving the licensing of FM radio stations.[17] As the Commission acknowledged, when the Commission adopted a first-come, first-served approach for FM radio, it used processing rounds for applications filed within thirty days after the creation of a new channel assignment.[18] This is analogous to the use of processing rounds when a new satellite service is created. It is irrelevant that FM radio is a "planned" service and most satellite services are not.[19] In both situations, the practical effect – the creation of a licensing opportunity when one did not exist previously – justifies the use of processing rounds because they maximize the opportunity to participate in the competitive provision of a new service.

Recognizing the numerous benefits that processing rounds contribute to the Commission's licensing process for satellite communications networks, the Commission should strive to improve the current system, rather than replace it with a process that would promote speculation and delay.

B. The Commission Should Further Improve its Satellite Licensing Procedures – a Process that the Commission has Already Initiated

In improving the current system, the Commission should take the following steps. First, the Commission should identify specific sources of delay in the satellite licensing process. Second, the Commission should distinguish between delay that the Commission can remedy and

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[17] *See NPRM,* ¶ 25 n.21.

[18] *See id.* ¶ 30.

[19] *See id.* ¶ 43.

delay that is largely outside of its control. Third, once it has identified delay within its sphere of influence, the Commission should determine whether additional measures are needed to reduce the delay, or whether existing procedures, alternately applied, can adequately address the problem.

1. The Commission Should Identify Sources of Delay that are Largely Outside of its Control and Clearly Distinguish this Delay in the Licensing Process

Before the Commission can make significant progress in eliminating delay in its satellite licensing process, the Commission must first distinguish between delay that the Commission can remedy, and delay that may be outside of its control. In order to eliminate any confusion, sources of delay that are beyond the Commission's control should be clearly identified in the Commission's licensing procedures.

A significant percentage of the delay that currently exists in the licensing of satellite networks is caused by external factors. For example, most of the delay in the creation of a new satellite service involves the international spectrum allocation phase, which the Commission can influence, but cannot control.[20] An additional external source of delay results from the fact that the Commission is often required to consult with other federal government agencies, such as the FAA and NTIA.[21]

The Commission also cannot, by changing its licensing procedures, address any delay that may be caused by the ITU's satellite network notification and coordination process. It is unclear, moreover, whether such delays actually hinder the Commission in licensing satellite

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[20] *See id.* ¶¶ 9, 25 (noting that "the allocation process can extend substantially the time needed to issue satellite licenses").

[21] *See id.* ¶ 8.

networks. The Commission suggests in its *NPRM* that "the current three-year backlog in publishing ITU submissions" has been a significant source of delay in U.S. licensing because the backlog "makes it difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another country."[22]

The Commission has never been obligated to refrain from issuing authorizations for orbital positions until their availability to U.S. applicants has been assured in the coordination process. It has always been an obligation of the applicant to assess the coordination prospects for the orbital slots that it requests to use and to undertake those risks and obligations once licensed, an approach that SIA supports. In fact, virtually every space station authorization that the Commission issues is conditioned on successful completion of ITU coordination. In any event, the ITU's public database of filed, but unpublished, advance publication and coordination requests eliminates the need to await publication before determining the prospects for coordination.

In those instances where externally caused delays cannot be avoided, the Commission should modify its processing rules so that delay that is beyond its control is publicly identified. For example, the Commission could refrain from assigning "pending" status to an application for a license in a new satellite service until all necessary international spectrum allocations have been adopted (or a consensus for such allocations appears likely) for the new service.

Such an approach would enable the Commission to more accurately identify the actual amount of delay that is within the Commission's power to remedy. In doing so, the Commission would also make its licensing process more transparent and predictable.

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[22] *See id.* ¶ 80.

2. The Commission Should Determine Whether Additional Measures are Needed to Correct Delay that Exists Within the Commission's Licensing Process

While some sources of delay may be outside of the Commission's control, other sources of delay can be remedied – in fact, some already have. For example, the Commission's first step in processing an application usually is to place the application on public notice for comment. This permits the development of a record in an application proceeding and also makes public all the relevant issues implicated by an application.

In certain instances, significant delays have occurred between the time applications were filed and their placement on public notice. For example, the Commission refrained from placing the second round Ka-band FSS applications on public notice until fifteen months after they were filed with the Commission.[23]

The International Bureau remedied this problem by adopting a new policy of placing applications on public notice within 10 days after their receipt by the Commission.[24] This policy has expedited the consideration of some recently filed applications. The new policy was not applied, however, to applications filed prior to the adoption of the policy, such as the satellite

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[23] See Public Notice, *Satellite Policy Branch Information: Satellite Applications Accepted For Filing in the Ka-band Cut-off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7 - 18.8 GHz, and 19.3 - 20.2 GHz Frequency Bands*, Rep. No. SPB-106 (Oct. 15, 1997) (setting Dec. 22, 1997 filing deadline for second rounds Ka-band applications); Public Notice, *Ka-band Satellite Applications Accepted for Filing*, Report No. SAT-00012 (March 16, 1999) (placing applications on public notice fifteen months after they were filed).

[24] *See* Public Notice, *International Bureau to Streamline Satellite and Earth Station Processing*, Report No. SPB-140 at 1 (Oct. 28, 1998) (streamlining the process for placing applications on public notice as a part of the Bureau's "continuing commitment to improve the efficiency of the satellite licensing process")

network applications in the 40 GHz proceeding.[25] SIA believes that the International Bureau should engage in a renewed effort to apply its 10-day public notice requirement universally in order to reduce unnecessary delay in the initial steps of a new proceeding.

In cases where it would be appropriate to initiate a processing round, the International Bureau could refrain from immediately placing new applications on public notice for comment. Instead, a cut-off notice should be issued within thirty days of the filing of a new application, which should announce the filing of the initial application and set a deadline for the filing of competing applications.[26] By promptly establishing a deadline for competing applications, the Commission could concurrently implement its *NPRM* proposal to place all potentially competing applicants in a processing round on public notice at the same time with identical pleading cycles.[27] Such an approach would expedite the processing of applications for new satellite networks without prejudicing underlying public policy or technical issues that may be raised by the applications.

Another improvement that is already being implemented involves the use of uniform service rules for different satellite services. The development of rules for new services has often been a significant source of delay. Much of this delay could be eliminated by adopting default service rules that could be utilized in most cases. For example, in the 2 GHz MSS proceeding

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[25] *See* Public Notice, *Applications Accepted For Filing; Cut-Off Established For Additional Space Station Applications And Letters Of Intent In The 36-51.4 GHz Frequency Band*, Report No. SPB-89 (July 22, 1997). The Public Notice set a cut off deadline of September 22, 1997 for applications to be filed for satellite networks operating in the 36-51.4 GHz band. The applications that were filed still have not been placed on public notice.

[26] While the Commission should promptly establish a deadline for the filing of potentially competing applications, the Commission should continue to provide adequate time for parties to prepare and file in advance of the cut-off deadline the detailed technical information that is required in a satellite system application.

[27] *See NPRM*, ¶ 77.

the Commission concluded that it should adopt the same service rules that were used in the Big LEO proceeding with limited exceptions.[28]

3. Where Necessary, the Commission Should Adopt New Procedures to Reduce Delay in Satellite Licensing

While some significant sources of delay are already being remedied, other sources of delay warrant the adoption of new procedures. As the Commission acknowledges in its *NPRM*, the most significant source of delay in the licensing phase of a processing round for a new satellite service is lengthy settlement negotiations among the applicants.[29] This delay could be reduced dramatically through the implementation of the Commission's proposal to adopt deadlines for settlement negotiations.[30]

For example, with respect to existing services, the Commission could issue a public notice immediately after the passage of an application cut-off date. This public notice would (1) establish a 30-day deadline for the filing of comments and petitions addressing the applications (along with subsequent deadlines for oppositions and replies) and (2) establish a concurrent 60- to 90-day deadline for filing any proposals that some or all of the applicants may successfully negotiate during the brief intervening period for resolving any mutual exclusivity.[31] Once the pleading cycle and negotiation period are completed, the Commission would receive

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[28] *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Notice of Proposed Rulemaking, FCC 99-50, ¶ 3 (March 25, 1999) (indicating that in order to avoid the addition of "duplicative and unnecessary rules," the Commission intends to use the Big LEO service rules as a starting point for developing service rules for 2 GHz MSS).

[29] *See NPRM*, ¶¶ 10, 68-69.

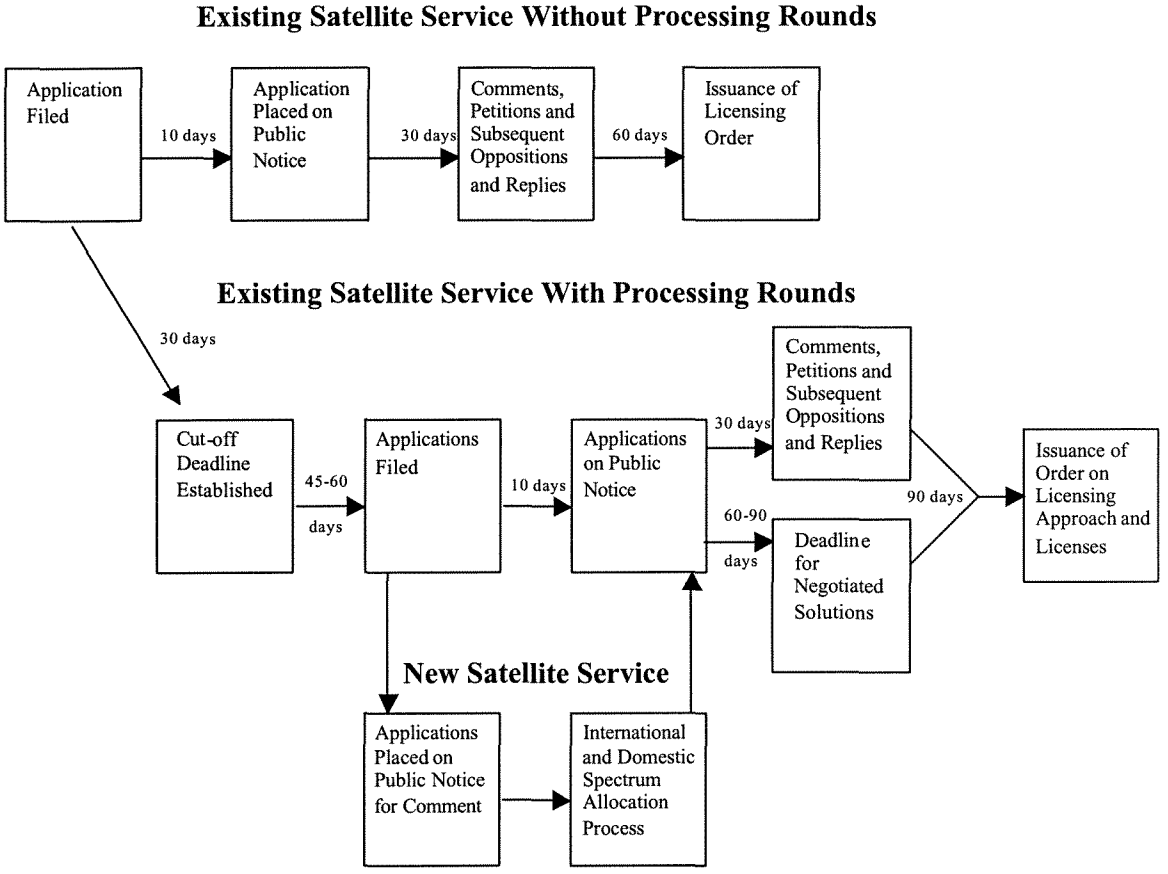
[30] *See id.* ¶¶ 50, 70.

[31] Such a pleading schedule could also allow for the filing of oppositions, replies and other responsive pleadings.

and consider *ex parte* presentations only for a period of 30 days. The Commission would then issue an order within 90 days following the close of the *ex parte* period, which would include a decision on the distribution of spectrum and orbital assets among the applications.

The Commission could also utilize an accelerated pleading/negotiation process for new satellite services that involve international allocations. Under such an approach, the Commission would simply suspend the deadline for the filing of settlement proposals until adequate international spectrum allocations have either been adopted (or are likely to be adopted) for the new service.

As indicated in the diagram shown below, such an approach could expedite substantially the process for licensing satellite networks. Authorizations for existing services that are granted through processing rounds could be issued in less than eight months, while authorizations that do not necessitate processing rounds could be granted in less than five months.



While the Commission should issue decisions expeditiously, the Commission should not restrict itself with respect to the options that are available to resolve mutual exclusivity. The *NPRM* suggests that the Commission should automatically resort to band division to resolve mutually exclusive situations.[32] As noted previously in these comments, however, the Commission has demonstrated in numerous proceedings that different satellite services can be accommodated most efficiently using different spectrum sharing and orbital assignment approaches.[33]

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[32] *See NPRM*, ¶ 33.

[33] *See supra* at text accompanying notes 5-8.

III. THE COMMISSION SHOULD ADOPT OTHER STREAMLINING MEASURES, FREEING COMMISSION RESOURCES TO ADDRESS LICENSING ISSUES

The Commission should adopt other streamlining measures that would eliminate unnecessary regulations and procedures, enabling Commission staff to devote more time to licensing issues. In this regard, the Commission proposes some streamlining measures in its *NPRM*. SIA suggests that the Commission adopt the following streamlining measures to improve its regulatory process:

- Require applicants to file electronically.
- Eliminate unnecessary technical disclosures in satellite applications.[34]
- Require applicants to include with their applications the ITU advance publication and request for coordination information in electronic format.
- Reinforce its milestone enforcement procedures in order to reduce delay in revoking the authorizations of unsuccessful licensees.[35]
- Permit operators of multiple satellites to move satellites between authorized and coordinated orbital positions following notification to the Commission and other affected licensed spectrum users.
- Streamline the process for requesting and issuing grants of Special Temporary Authority ("STA").
- Automatically renew licenses for satellite networks authorized for ten year terms for an additional period of five years.
- Streamline and improve the approval process for replacement satellites.[36]

In addition, SIA urges the Commission to continue to take steps to identify other methods that can be utilized to further streamline and improve its regulatory framework for satellite licensing. Such measures could have a significant impact in eliminating unnecessary delay in the licensing

[34] *See infra.* at Section IX.

[35] *See infra.* at Section VI.

[36] *See infra.* at Section X.

and regulatory process. As noted previously, however, in evaluating proposals to improve the Commission's licensing process, the Commission should exercise extreme care in order to ensure that any remedial measures or new approaches do not compromise the Commission in its global leadership role in the promotion, licensing, and regulation of satellite communications services.

A. The Commission Should Require Satellite License Applicants To File Electronically

In order to help streamline the processing of satellite applications, the Commission should require satellite operators to file applications and letters of intent electronically. As the Commission observes in its *NPRM*, the Commission staff has managed to expedite considerably the processing of earth station applications that are filed electronically.[37] On occasion this has included earth station applications that included more than one hundred pages of exhibits.[38]

In order to further enable the electronic filing of satellite applications, the Commission should streamline its technical disclosure requirements for applicants. SIA provides specific suggestions on outdated and unnecessary technical disclosure requirements in Section IX of these comments. The Commission will also need to make changes to the electronic filing

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[37] *See NPRM,* ¶ 118.

[38] While satellite applicants should be required to file electronically, applicants should still be permitted the option of submitting application filing fees manually, just as they are currently permitted to do with earth station applications. SIA observes, however, that earth station applicants that submit fees manually are often subjected to a two-week delay in processing. The Commission should take steps to reduce this delay. Additionally, the Commission should eliminate its policy of refraining from processing earth station applications until Mellon Bank has received and processed the filing fee payments. *See* http://svartifoss2.fcc.gov/prod/ib/forms/payment_ instructions.htm#PayingByCheck. Instead, the Commission could expedite the processing of applications by placing them on public notice immediately and refraining from granting the application if the payment is not timely submitted.

system to enable this requirement for all types of space station applications (*e.g.*, to allow filing for hybrid satellites with multiple frequencies, and other characteristics).

B. The Commission Should Require the Submission of ITU Materials as Part of an Application

The Commission should require that applicants submit with their application the advance publication and coordination information required by Appendix 4 to the ITU's Radio Regulations in electronic format.[39] In a case where the Commission does not plan to conduct a processing round, the Commission should submit the advance publication information to the ITU as soon as the application is filed. In the case where the Commission does plan to use a processing round, the Commission should submit the information to the ITU as soon as it has consolidated the ITU information of each of the competing applicants in order to ensure that the ITU filings do not prejudice the interests of any of the applicants with respect to divergent system designs.

This two-prong approach accomplishes a number of major Commission goals in this proceeding. It achieves standardization in the presentation of technical information in electronic format.[40] Filing early with the ITU would also help to prevent other administrations from leapfrogging ahead of U.S. applicants. Finally, streamlining technical requirements and providing expedient notifications to the ITU would encourage satellite operators to utilize the Commission's licensing process.

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[39] Appendix 4 of the Radio Regulations specifies the information required for advance publication of satellite networks (pursuant to Section I of Article 9 of the Radio Regulations) and for initiating coordination of satellite networks (pursuant to Section II of Article 9 of the Radio Regulations).

[40] In Section IX of these comments, SIA proposes that the Commission not adopt Schedule S but instead rely on the ITU material and information provided in the narrative application. See *infra* at Section IX.

Obviously, in order to implement early filing with the ITU, satellite applicants should be required to file concurrently with their applications: (1) correctly formatted advance publication and coordination information for the satellite network, which can be forwarded electronically to the ITU, and (2) an executed certificate indicating that: (i) regardless of the disposition of the application, the applicant agrees to be responsible for the cost recovery fees associated with the ITU filing, and (ii) the applicant acknowledges that the filing of the information with the ITU does not place the applicant in a preferential position with respect to the eventual assignment by the Commission of authorizations to use particular spectrum or orbital positions.

C. The Commission should grant flexibility to satellite operators that hold licenses for satellites at multiple orbital positions

The Commission should also streamline its rules by permitting operators to proactively manage their satellite resources by moving previously licensed satellites between authorized orbital positions. Satellite operators should be allowed to make such adjustments following ten day advance notification to the Commission and any potentially affected licensed spectrum users, as long as the new arrangements comply with the technical restrictions of the operators' licenses, the Commission's rules, and all relevant coordination agreements.[41] Operators that rearrange satellites between authorized orbital positions should be required to include in their notification to the Commission a certification that (1) the relocated satellites will continue to meet all of the Commission's rules, technical restrictions in the operator's licenses, and any technical or operational restrictions in the coordination agreements for the orbital locations they are being relocated to; and (2) the operator will continue to maintain coordination agreements with all relevant licensed spectrum users.

[41] The Commission should also publicize the existence of these advance notifications through periodic public releases, but should not place the notifications on public notice for comment.

Licensees that move satellites between authorized orbital positions should be required to limit the operations of the satellites to TTC&M frequencies during the drift. The operators should also be required to coordinate the TTC&M operations of the satellite with other satellite operators in order to ensure that no unacceptable interference results from its TTC&M operations during the drift.

D. The Commission Should Simplify its Process for Granting STA requests

SIA also recommends that the FCC codify its policies for granting STA requests and, to the extent possible, streamline the process.[42] The Commission has in the past refused to grant a STA request for more than 30 days without seeking public comment on the request and has refused to grant a STA request for more than 60 days unless the operator also files an application for permanent authority.[43] If the Commission continues to believe these policies are appropriate, then it should codify these policies in its rules.

The Commission should also streamline treatment of STA requests. SIA proposes that the Commission require STAs to be submitted electronically with a courtesy copy to an International Bureau designee. Unless the FCC notifies the applicant to the contrary, properly filed STA requests could be "deemed granted" for a period of 30 days commencing on the seventh business day after filing. Requests for special temporary authority for longer than 30 days should be "deemed granted" on the fifth business day following the expiration of the public notice period if no opposition is received. As is the case now, any STA granted would be

[42] SIA notes that these recommendations would not apply, however, to STA requests to operate a satellite whose initial license term has expired, but remains capable of continued operation beyond its license term. If the Commission accepts SIA's recommendation that it automatically renew license terms for an additional five-year period, the number of STA requests will fall dramatically. *See infra* Subsection V, E.

[43] These policies are based on the statutory requirements set out in 47 U.S.C. § 309(c)(2)(G).

subject to the condition that the licensee not cause interference to, and accept interference from, any other lawfully operating radio station.

SIA's proposed modification and codification of the FCC's STA grant procedures would further regulatory certainty, reduce administrative costs and thus serve the public interest. The certainty of receiving STA within a specified time frame unless an opposition is filed will offer satellite operators necessary flexibility to respond to market demands for service.

E. The Commission Should Automatically Renew Existing Satellite Authorizations for an Additional Five Years

The Commission should also revise its rules so that existing licenses for satellite networks (those authorized prior to the adoption of the *Order* in this proceeding) renew automatically for an additional five years. Such an approach would eliminate the need for STAs for satellites that successfully outlive their initial license term. Such an approach would also make the Commission's existing space station licenses more consistent with its new approach, which is to license space stations for an initial period of 15 years.[44]

IV. REGARDLESS OF THE OTHER MEASURES THAT ARE ADOPTED, THE COMMISSION WOULD NOT SERVE THE PUBLIC INTEREST BY ADOPTING THE FIRST-COME, FIRST-SERVED APPROACH INCLUDED IN THE *NPRM*

The first-come, first-served option that is outlined in the *NPRM* would create more problems for the Commission and the satellite communications industry than the option purports to resolve. The *NPRM* raises the idea of issuing licenses to any qualified applicant on a first-come, first-served basis, but fails to propose adequate and necessary safeguards to prevent widespread speculation, trafficking and inefficient use of radiocommunications spectrum, let alone address the international implications of the proposed approach.

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[44] *See Order* ¶ 141.

Such a hands off approach would be comparable to the ITU's first-come, first-served approach for satellite coordinations. As the Commission is well aware, the ITU's process has spawned an overwhelming number of speculative filings that were submitted by administrations on behalf of entities seeking to take advantage of the ITU's relatively unrestricted first-come, first-served procedures. The ITU process is also flooded with adversarial and defensive filings that were submitted by administrations on behalf of entities seeking to block legitimate operators, or try to hold spectrum fallow for possible later use.

This same result could be expected to occur in the domestic licensing process. Not only would a first-come, first-served approach prompt the filing of speculative applications, but it would also force legitimate satellite operators to file numerous precautionary applications for orbital assignments that they might need in the future, and also for orbital positions that they have no definite intention of using, but which might result in an interference concern if occupied by competing operators. The resulting influx of applications before the Commission would be extremely difficult to manage.

The Commission's *NPRM* seems to acknowledge that any first-come, first-served approach would need to be accompanied by "measures to discourage speculative or frivolous satellite applications."[45] The proposals that are mentioned briefly in the *NPRM*, however, would clearly be inadequate to remedy the problem. For example, a limit on the number of concurrent applications that an applicant can have pending, or a 33% attribution rule would only reduce the amount of speculation and blocking that a single entity could cause, it would not prevent it.[46]

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[45] *See NPRM*, ¶ 51.

[46] *See id.*

The possibility of preventing applicants from allowing other entities to assume their place in any queue would also do nothing to prevent speculative and adversarial applications.[47] First, an applicant seeking to block other entities from launching new satellite systems would arguably have no interest in transferring its application to other parties. Second, an applicant seeking to speculate on a Commission authorization would simply need to refrain from transferring the authorization until after the license has been granted, at which point the authorization would arguably achieve its greatest value.

Finally, the Commission proposes to refrain from assigning automatically all available spectrum in a particular frequency band to a first-filed non-geostationary ("NGSO") applicant, but instead make a pre-licensing determination regarding the possible spectrum needs of the prospective licensee.[48] Such an approach, however, would also do little to prevent speculative and adversarial applications from being filed with the Commission. It might also result in multiple band segmentations that could make it difficult for NGSO applicants to gain access to adequate spectrum to operate their systems,[49] or to establish efficient mechanisms for spectrum sharing between NGSO and geostationary ("GSO") systems in the same bands.

Not only does the *NPRM* fail to suggest adequate safeguards to prevent abuse, but it also raises the possibility of eliminating safeguards that have already proven to be effective. For example, as discussed in the following section of these comments, the Commission proposes to eliminate its anti-trafficking rules. The Commission raises this possibility even though it acknowledges that its "[a]nti-trafficking rules discourage speculators and prevent unjust

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[47] *See id.* ¶ 53.

[48] *See id.* ¶ 54.

[49] *See, e.g., Ku-band NGSO FSS Service Order* (concluding that it would be most efficient to permit NGSO licensees to operate across the entire available spectrum band).

enrichment of individuals or companies that have no intention of building facilities and actually operating satellite systems."[50] In stark contrast, shortly after the Commission adopted a first-come, first-served approach for its FM radio service, it adopted measures to deter such speculation in order to respond to the wave of applications that was prompted by the new first-come, first-served procedures.[51]

The Commission should therefore reject outright the first-come, first-served option that is outlined in the *NPRM*. Instead, the Commission should engage in a concerted effort to improve its current system. Options exist for the Commission that would enhance significantly the current process for issuing satellite licenses and orbital assignments. Such a curative approach would be a significantly better option than engaging in real-time experimentation by attempting to implement the radically different and untested approach to issuing satellite authorizations that is outlined in the *NPRM*.

V. THE COMMISSION SHOULD RETAIN OTHER LONG STANDING POLICIES THAT CONTRIBUTE TO THE FAIR AND EFFICIENT LICENSING OF SPECTRUM AND SATELLITE ORBITAL RESOURCES

The Commission proposes in its *NPRM* that, in addition to eliminating application processing rounds, the Commission should cease to employ several other longstanding rules and policies for satellite network licensing. For example, the Commission requests comment on the

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[50] *Id.* ¶ 116 (*quoting Big LEO Order* at 6014; *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Third Report and Order, 12 FCC Rcd 22310, 22339-40 (1997)).

[51] *See, e.g., Settlement Agreements*, Report and Order, 6 FCC Rcd 85 (1990), *modified in part*, Memorandum Opinion and Order, 6 FCC Rcd 2901 (1991) (limiting the payment an applicant can receive for withdrawing an application).

possibility of eliminating its fungibility policy and its anti-trafficking rules.[52] The Commission provides no evidence that these policies and rules fail to serve the public interest.[53] Instead, the Commission appears to acknowledge that both its anti-trafficking rules and its fungibility policy have beneficial effects for satellite communications services.[54] SIA believes that these policies are essential to the current licensing regime and should be maintained.

A. The Commission Should Continue To Utilize its Fungibility Policy Because it Provides Significant Assistance in Resolving Mutual Exclusivity Between Applicants

An important component of the Commission's satellite licensing process is its use of a policy of fungibility in order to resolve potential mutual exclusivity between multiple applicants in processing rounds. As the Commission has previously acknowledged, its fungibility policy serves the public interest because it increases efficient use of spectrum and orbital resources by maximizing the number of independent systems that can be accommodated to provide competitive and diverse services to consumers.[55] SIA also believes that the Commission's fungibility policy can expedite substantially the licensing of multiple applications by avoiding mutually exclusive conflicts.

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[52] *See NPRM* ¶¶ 79-81; 109-117

[53] The Commission apparently proposes to eliminate the rule because it believes that the rule may be a potential source of delay in the licensing and launch of satellite networks. *See NPRM,* ¶¶ 108, 111.

[54] *See infra* at notes 55, 60-61.

[55] *See, e.g., Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Order on Reconsideration, 16 FCC Rcd 15579, ¶ 30 (Aug. 16, 2001) (indicating that "[t]reating orbital locations as fungible has allowed us to grant multiple applications for the same location, without holding comparative hearings or devising another time-consuming procedure to select among applications requesting the same orbital location").

Despite these recognized benefits, the Commission proposes to eliminate its fungibility policy, claiming that it is a source of delay in the processing of applications.[56] The Commission indicates that efforts to "find a way to accommodate each applicant as much as possible can substantially increase the time needed to complete a processing round."[57] The Commission argues that the task is made harder by the current backlog in publishing ITU submissions, which "makes it difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another country."[58]

As indicated in Section II, B, 1 of these comments, however, in implementing its fungibility policy, the Commission has never had to delay issuing authorizations for orbital positions until the ITU coordination process has advanced appreciably. Furthermore, the ITU's public database of filed, but unpublished, advance publication and coordination requests makes it possible to assess the prospects for completing coordination on particular orbital positions shortly after they are submitted to the ITU.

Most importantly, in the context of application processing rounds, the Commission's fungibility policy can expedite the licensing of new satellite systems by providing a tool that can be used to remedy mutually exclusive conflicts. Thus, while the fungibility policy might not be needed in the context of a first-come, first-served approach, the fungibility policy remains a critical component in the fair and efficient resolution of processing rounds.

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[56] *See NPRM,* ¶ 80.

[57] *Id.*

[58] *See id.*

B. The Commission Should Retain its Anti-Trafficking Rules Because They are an Important Deterrent to Speculative License Applications

The Commission should continue to apply its anti-trafficking rules to satellite communications services, and should modify its rules so that they apply to all satellite services, rather than just selected services.[59] As noted previously, the Commission acknowledges in its *NPRM* that its "[a]nti-trafficking rules discourage speculators and prevent unjust enrichment of individuals or companies that have no intention of building facilities and actually operating satellite systems."[60] Furthermore, in an order released two months after the Commission's *NPRM*, the Commission concluded that "we believe that the policies of deterring speculation and unjust enrichment have been well served by the anti-trafficking rule."[61]

Despite these conclusions, the Commission speculates in its *NPRM* that its anti-trafficking rules may have the unintended effect of restraining licensees that no longer want to construct their licensed systems from selling the authorizations to more interested parties.[62] Any licensee that obtains a license with a legitimate intent to construct its system, and later decides not to construct, will have every incentive to sell the license if it can recoup its expenses. As the

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[59] *See* 47 C.F.R. § 25.143(g) (2001) (applying anti-trafficking rules to the Big LEO and 2 GHz MSS services); 47 C.F.R. § 25.145 (2001) (applying anti-trafficking rules to the FSS service in the Ka-band); 47 C.F.R. § 25.146(i) (applying anti-trafficking rules to the Ku-band NGSO FSS service).

[60] *Id.* ¶ 116 (*quoting Big LEO Order* at 6014; *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Third Report and Order, 12 FCC Rcd 22310, 22339-40 (1997)).

[61] *The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, Report And Order Further Notice Of Proposed Rulemaking, FCC 02-123, ¶ 82 (April 26, 2002).

[62] *See NPRM*, ¶ 111.

Commission acknowledges in its *NPRM*, the cost of securing a satellite authorization is sizable.[63] Such a licensee would also have a strong incentive to sell its license very quickly because of the Commission's policy that the transferee of a satellite license must construct the system using the milestones that were included in the original authorization.

Furthermore, the application of the Commission's anti-trafficking rules include adequate safety measures to ensure that enforcement of the rules do not inhibit legitimate transactions from taking place. For example, the rules permit licensees to transfer bare satellite licenses, so long as the transaction does not result in a profit.[64] Furthermore, the Commission also permits the transfer of control of a licensed but unbuilt satellite system or satellite system applicant if the transfer results from an effort to raise capital and the original parties remain involved in the operation.[65] The Commission also waives application of its anti-trafficking rules when a change in ownership is an incidental part of a larger corporate acquisition.[66]

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[63] *See id.*, ¶ 117.

[64] *See*, e.g., *NetSat 28 Company, L.L.C.; For Authority to Transfer Control of its Authorization to Launch and Operate a Geostationary Satellite in the Ka-Band Fixed-Satellite Service at 95° W.L.*, 16 FCC Rcd 14471, 14476 (2001).

[65] *See, e.g., KaStar 73 Acquisition, LLC, and KaStar 109.2 Acquisition, LLC, Applications for Consent to Transfer of Control*, 15 FCC Rcd 1615, ¶ 12 (Int'l. Bur. 1999) (transfer of control of licensee); *Satellite CD Radio, Inc.*, 9 FCC Rcd 2569, 2571 (Com. Car. Bur. 1994) (transfer of control of applicant).

[66] *See Air Signal International, Inc.*, 81 F.C.C.2d 472, 475 (1980) (permitting Xerox to acquire Air Signal's parent, WUI, Inc. because such an acquisition was clearly for "an independent business purpose, and not primarily for acquiring pending applications"); *see also Starsys Global Positioning, Inc.*, Order and Authorization, 11 FCC Rcd 1237, 1238 (Int'l Bur. 1995) (finding that anti-trafficking rules would not prohibit GE Americom from acquiring an 80% interest in Starsys).

While the Commission suggests in its *NPRM* that its anti-trafficking rules may result in administrative delay,[67] the delay is arguably minimal compared to the delay that would result from the wave of speculative transfer applications that would likely occur if the Commission eliminates its anti-trafficking rules. In any event, regardless of the ultimate impact on the administrative process, the Commission should not eliminate rules that have proven to be effective and beneficial simply for its administrative convenience.

Because of the tremendous value of spectrum resources, the potential for speculation has always been a legitimate concern for the Commission. Speculation increases costs for consumers and delays the launch of new services. The Commission has long recognized the significant importance of deterring speculation in satellite service authorizations. The Commission has also long recognized the ability of its anti-trafficking rules to deter speculation. The Commission should therefore retain its anti-trafficking rules as an important component of its licensing and regulatory processes.

VI. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE ITS MILESTONE REQUIREMENTS FOR SATELLITE LICENSEES

The Commission should take steps to improve its milestone requirements in order to reduce the amount of time required for the Commission to recover spectrum and orbital authorizations from licensees that are unable or unwilling to construct their licensed networks. The following chart lists the Commission's recent cases involving milestone compliance for FSS and mobile satellite service ("MSS") licensees. As the chart indicates, in those cases where licenses have been revoked for failure to proceed, an average of four years has passed between the issuance of a license and a final Commission order recovering the unbuilt authorization.

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[67] *See NPRM*, ¶ 115.

About half this delay – two years – involves the passage of time between the licensee's first milestone deadline and the issuance of an initial order voiding the license. A significant portion of this two-year interval involves an exchange of correspondence between the licensee and the Commission regarding the submission by the licensee of a copy of its non-contingent satellite construction contract.

Cancellation Order	Date of Licensing	FCC Milestone Determination	IB Order of Cancellation	FCC Order on Review	Approx. Interval
DA 01-1315	July 1, 1997	Signed non-contingent contract, but later introduced contingency	May 31, 2001	Not requested	4 years, 11 months
DA 00-1266	May 9, 1997	Did not enter into construction contract	June 26, 2000	May 25, 2001	4 years
DA 00-1265	May 9, 1997	Entered into contingent contract after deadline	June 26, 2000	May 25, 2001	4 years
DA 00-1264	May 9, 1997	Entered into contract 18 months after deadline	June 26, 2000	Not requested	3 year
DA 96-363	July 7, 1992	Entered into contingent contract after one extension	Mar. 14, 1996	Oct. 10, 1997	5.25 years
DA 92-292	Dec. 7, 1988	Did not enter into contract following one extension	Mar. 11, 1992	June 27, 1993	4.5 years

In order to reduce this delay, the Commission should reinforce its first milestone requirement for FSS and MSS licensees. A variety of options are available to the Commission to help reduce delay in its application of the initial milestone. For example, the Commission could expedite the initiation of inquiries regarding licensees that may not have complied fully with the first milestone requirement. The Commission could also establish fixed procedures and a set time limit for the submission of copies of non-contingent satellite construction contracts

following receipt by the licensee of an inquiry from the Commission.[68] Each of these options could help reduce the need for the Commission to engage in an often time consuming exchange of correspondence with licensees regarding the submission of copies of their contracts for Commission review.

While SIA supports improvements to the Commission's milestone process, SIA questions whether it is necessary or beneficial to add a fixed milestone date for Critical Design Review ("CDR"). As indicated in the previous chart, in every recent license cancellation case involving FSS and MSS satellites, the licensee failed to comply (or maintain its compliance) with its initial milestone requirement. SIA believes that a similar trend exists in the DBS service.[69] Therefore, it is unclear whether subsequent milestones are needed.

If the Commission does adopt a milestone for completion of CDR review, however, it should permit licensees to develop their own CDR deadlines. Licensees should be required to disclose to the Commission a deadline date for CDR at the same time that they certify that they have entered into a non-contingent satellite construction contract. The Commission could then

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[68] For example, with respect to those cases in which the Commission believes that a licensee should be required to submit a copy of its contract to the Commission, the Commission could clarify its rules to require that, within 15 days upon receiving notification from the Commission, the licensee must submit: (1) a redacted copy of the contract for public inspection, (2) a less redacted copy of the contract for Commission review, and (3) if desired, a request for confidential treatment of the less redacted contract.

[69] *See, e.g., Continental Satellite Corporation For Assignment of Direct Broadcast Satellite Orbital Positions and Channels For Consent to Transfer of Control to Loral Aerospace Holdings, Inc.*, 10 FCC Rcd 10473 (1995) (rejecting Continental's satellite contract because initiation of construction was contingent on an initial payment that Continental was not obligated under the terms of the contract to make).

use the licensee's CDR completion date as the milestone requirement for the license.[70] If the CDR completion date that is put forth by the licensee is unreasonable, of course, the Commission would still have the option of initiating an inquiry. Such an approach would enable licensees to have reasonable flexibility in the construction of their networks, while ensuring that licensees proceed expeditiously with the provision of new services to consumers.

In any event, the Commission should refrain from imposing penalties – other than the loss of the license in question – on licensees that fail to meet their milestones.[71] Creating such a penalty for missed milestone would discourage companies from seeking licenses for new and innovative types of satellite communications systems. For example, the present day success of the direct broadcast satellite industry followed an earlier period of missed milestones incurred by the initial applicants for DBS licenses.

Furthermore, such a rule would not encourage compliance with the Commission's milestone requirements.[72] Satellite companies, especially publicly traded companies, have a fiduciary duty to shareholders to continually reassess investment decisions. Such companies should not be penalized for making economically efficient and commercially reasonable decisions based on circumstances that may have changed significantly since the time the application was filed. Such a rule could also be easily bypassed by speculators through the use of multiple corporate entities.

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[70] In establishing a milestone for CDR, however, the Commission should clarify that if, through no fault of the licensee, actual CDR is delayed from the disclosed milestone date, the Commission will consider requests to grant reasonable extensions of the CDR deadline. Without such an avenue, licensees could be prejudiced by design and schedule delays of the manufacturing process.

[71] *See NPRM*, ¶ 106.

[72] *See id.*

VII. THE COMMISSION SHOULD NOT DISCARD WITHOUT FURTHER CONSIDERATION FINANCIAL QUALIFICATION REQUIREMENTS

Section 308(b) of the Communications Act, 47 U.S.C. § 308(b), obligates the Commission to ensure that an applicant is qualified to hold a license.[73] To satisfy this obligation, the Commission may prescribe necessary qualifications, including requiring an applicant to demonstrate that it is financially qualified to construct and operate its proposed system.[74]

For decades the Commission enforced financial qualification requirements, while also seeking to ensure that licensing qualifications do not pose a barrier to entry for entrepreneurial companies. Despite this past use, the Commission suggests in its *NPRM* that financial qualification rules are "duplicative" with milestone requirements because "[b]oth are designed to ensure that applicants are positioned to provide service to the public in a timely manner."[75]

In reality, however, properly designed financial qualification requirements can serve as a complement to milestones, rather than as a substitute for them. SIA therefore believes that the Commission should give further consideration to improving its financial requirements, rather than eliminating them. A properly functioning financial qualification process should be sufficiently flexible to accommodate entrepreneurial applicants and unique proposals for satellite networks. In order to achieve such results, the current rules may need significant revision in order to ensure that they are not overly burdensome to new entrants in the industry. SIA believes, however, that further investigation should be made into potential improvements to the financial qualification rules rather than eliminating this regulatory tool.

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[73] *See* 47 U.S.C.A. § 208(b) (2001).

[74] *See id.*

[75] *NPRM* ¶ 102.

VIII. IN IMPROVING THE COMMISSION'S SATELLITE LICENSING PROCESS, THE COMMISSION SHOULD NOT ADOPT PREFERENCES FAVORING PARTICULAR APPLICANTS

In attempting to identify measures that can be used to improve the Commission's satellite licensing process, the Commission should avoid the use of preferences for applicants that could delay the issuance of licenses and expose the Commission's licensing decisions to potential challenge.

First, the Commission should not adopt a preference for new entrants because of the difficulty that would often result in determining which applicants qualify as newer to the industry.[76] Such an approach also raises questions regarding whether a strict count of licensed satellites is a valid indicator of new entrants and does not address how the resources of NGSO applicants and licensees would be evaluated.[77] Such an approach would require the adoption of detailed affiliation restrictions. Furthermore, the proposed approach would encourage speculation and greenmail by new entrants seeking to profit from the transfer of satellite licenses to existing operators, increasing costs for legitimate operators and consumers. Finally, such an approach would unfairly discriminate against existing satellite operators that may be successful in the communications industry, even though they do not hold sufficient market share to be considered dominant in any market.

Second, as discussed in a previous section, the Commission should refrain from adopting a preference for satellite applicants that have not missed a milestone.[78] Satellite companies should not be penalized for making economically efficient and commercially reasonable

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[76] *See id.* ¶ 71.

[77] *See id.*

[78] *See id.* ¶ 72.

decisions regarding the continued viability and advisability of constructing new satellite communications networks. A penalty for missed milestones will discourage companies from seeking licenses for new and innovative types of satellite communications systems.

Third, the Commission should not adopt a preference for satellite applicants that have, at their own risk, made the most progress in constructing a satellite system prior to licensing.[79] Such an approach would make it harder for new entrants to secure licenses to provide satellite communications service. It would be difficult for a new entrant to obtain financing to construct a satellite network at its own risk, particularly when the applicant would have no assurance of eventually securing a license to provide service. Such a situation would force the Commission to make subjective determinations about which applicants have made legitimate progress on satellite construction. It could also place the Commission and the applicant into a significant conflict over the technical and operational parameters that a company used in the network design of satellites that it began building at its own risk.

Fourth, the Commission should not adopt a preference for satellite applicants that commit to provide service to rural and unserved areas.[80] As a preliminary note, virtually all satellite network applicants could make a commitment to the Commission to serve rural and unserved areas. Satellite communications services are uniquely suited to provide competitive services to rural and unserved areas on an identical basis to urban areas. Despite this fact, the Commission should not adopt a preference for satellite applicants that make such a commitment because it will force the Commission to make subjective determinations about negligible differences in satellite service offerings that could delay significantly the licensing process.

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[79] *See id.* ¶ 73.

[80] *See id.* ¶ 74.

Fifth, the Commission should not adopt a preference in processing rounds for satellite applicants that file earlier than competing applicants.[81] Such an approach would encourage applicants to file incomplete and poorly prepared applications and would certainly not result in more advanced system designs to serve the public interest. As the Commission is aware, the preparation of a satellite application involves substantial engineering analysis. Encouraging applicants to abbreviate this work would result in poor designs and less efficient spectrum use. This would be another instance of merely shifting delay to another stage of the process, which would neither advance the Commission's objectives in this proceeding nor serve the public interest.

IX. THE COMMISSION SHOULD REVISE THE TECHNICAL DISCLOSURE REQUIREMENTS FOR SATELLITE APPLICATIONS

The Commission has proposed revising its requirements for technical information to be filed by applicants both in this *NPRM*[82] and in the *Part 25 Earth Station Streamlining NPRM.*[83] SIA supported the Commission's streamlining efforts in the *Part 25 Earth Station Streamlining NPRM.*[84] In the context of this new *NPRM* and the Commission's express interest in rationalizing the entire satellite licensing process, SIA now urges the Commission to go even further in streamlining the technical information required of applicants for space stations.

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[81] *See id.* ¶ 75.

[82] *Id.*, ¶¶ 84-97.

[83] *See 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, 15 FCC Rcd 25128 (200) ("*Part 25 Earth Station Streamlining NPRM*").

[84] SIA not only submitted comments in the proceeding, but also produced a detailed review of the Part 25 rules. *See* SIA, *Reply Comments*, May 7, 2001 and *Further Comments and Submission*, "Proposed Revision of FCC Technical Rules," November 5, 2001.

The following SIA suggestions reflect a balance among various objectives: (1) the need of satellite operators to obtain sufficient information from applications filed by others to resolve interference questions; (2) the importance of providing sufficient information so that the Commission can determine that the applicant is technically qualified and *bona fide*; and (3) the interest in avoiding duplicative requirements. These suggestions also reflect SIA's proposal that the Commission require applicants to submit as a part of their initial filings the advance publication and coordination information required by Appendix 4 to the ITU's Radio Regulations.

SIA recommends against adopting Schedule S.[85] Much of the technical information which the Commission proposes to collect is either unnecessary, duplicative, or both.[86] The Commission should reduce to the necessary minimum the technical information that space station applicants are required to provide in order for the Commission to verify compliance with its rules and policies and to evaluate and resolve interference issues. Much of that information already is contained in Appendix 4, and should not have to be filed a second time in a different form. Any information that is not included in Appendix 4 and remains essential can be required as part of the narrative application. The Commission also should eliminate the elements of 25 CFR 114(c) that are duplicative of the information contained in Appendix 4 and also repeal those

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[85] In the *Part 25 Earth Station Streamlining NPRM*, SIA stated that it supported the adoption of Schedule S, but also wanted applicants to be able to provide more information in the narrative portion of their filing. In the larger context of streamlining the entire licensing process, it makes more sense to limit the information that is requested and rely, where possible, on the ITU filings.

[86] For example, the Commission proposes to both require more precise calculations to confirm that power flux density ("PFD") levels in 47 C.F.R. 25.208 are met, and a certificate that the same PFD levels are met.[86] *See NPRM*, ¶¶ 91-92. If the Commission is requiring applicants to certify compliance, it seems unnecessary to provide the detailed calculations unless the Commission has some reason to question the validity of the certification.

information requirements in 25 C.F.R. 114(c) which are outdated and no longer absolutely necessary for Commission review.

The Appendix 4 advance publication and coordination information enables other satellite operators to assess inter-system interference and assist the Commission in determining whether an applicant is technically qualified. Moreover, relying on Appendix 4 coordination information where possible meets Commission objectives of avoiding duplicative information requests and standardizing the presentation of technical information so the Commission can more easily analyze it.[87]

The adoption of this streamlined approach to the technical information required to be filed should also resolve the Commission's concerns with respect to filing requirements for non-U.S. licensed satellite systems.[88]

X. THE COMMISSION SHOULD RETAIN AND IMPROVE ITS APPROACH FOR PROCESSING APPLICATIONS FOR REPLACEMENT SATELLITES

As the Commission indicates in its *NPRM*, given the huge costs of building and operating space stations, operators must have assurance that they will be able to continue to serve their customers through the use of replacement satellites.[89] The Commission should provide this assurance by continuing to authorize routinely replacement satellites whenever an orbit location remains available for a U.S.-licensed satellite.

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[87] The Commission already proposes to use the ITU *gxt format for satellite antenna gain contours. *See NPRM*, ¶ 93. This format certainly facilitates analysis of proposed systems. Since the information is already in the ITU submission, it is duplicative to require it again in 25 C.F.R. 114(c).

[88] *NPRM*, ¶ 131.

[89] *See id.* ¶ 119.

The Commission should also adopt its proposal to deem unopposed applications for replacement satellites to be granted automatically following the deadline for petitions to deny, unless the Commission issues a public notice indicating a need to conduct a further review of the application.[90] This treatment should be provided to all replacement satellites that have technical characteristics consistent with those of the satellite to be retired.[91]

In authorizing the launch of replacement satellites, the Commission should also employ a broad definition of satellites "with technical characteristics consistent with those of the satellite to be retired."[92] As the Commission acknowledges in the *NPRM*, "replacement satellites need not be exactly the same as the satellites they replace."[93] Furthermore, the Commission encourages satellite operators to utilize the most up to date technology in replacement satellites to serve consumers.[94]

In order to encourage technical innovation, the Commission should treat any replacement satellite as 'technically consistent' if it:

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[90] *See id.* ¶ 120.

[91] *See id.*

[92] *Id.*

[93] *Id.* ¶ 120 n.160 (*citing Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 3 FCC Rcd 6972, 6976 n.31 (1988); *Hughes Communications Galaxy, Inc.*, Order and Authorization, 6 FCC Rcd 72, 74 n.7 (1991).

[94] *See id.* (*citing An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It*, First Report and Order, 100 FCC 2d 976, 1006 (1985) (concluding that "replacement satellites should incorporate appropriate improvements in technology that will inevitably have arisen since the original satellite was first designed")

- Does not use any new frequency bands, except for expanded frequencies within a band that is already authorized (*e.g.*, adding extended Ku-band frequencies to a satellite that already has Ku-band authority),[95]

- Limits any changes to the coverage area to those that can be made within the Commission's rules, and any relevant coordination agreements, and

- Is able to operate at power levels, emissions characteristics and signal modulation techniques that comply with the limits included in the Commission's technical regulations and any existing coordination agreements with other spectrum users.

Such a flexible approach would enable satellite operators to continue to provide service to their customers that is technically competitive with the offerings of terrestrial-based communications services. Such an approach is also warranted because, if a proposed replacement satellite raises any potential concerns for other spectrum users or the Commission, they can always remove the application from streamline processing by filing an opposition or, with respect to the Commission, on its own motion.

XI. CONCLUSION

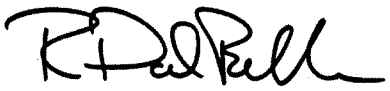
For the foregoing reasons, SIA respectfully requests that the Commission take steps to improve its existing licensing process for satellite authorizations and orbital assignments. The Commission should also engage in other measures to streamline its regulatory process, so that

[95] Providing "technically consistent" treatment for replacement satellites that propose to use expanded frequencies should not be permitted, however, if the expanded frequencies have been subdivided between multiple licensees, such as between GSO and NGSO licensees, as is the case in the Ka-band.

additional resources can be dedicated to licensing issues. Finally, the Commission should refrain from adopting the first-come, first-served approach that is outlined in the *NPRM*.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

By: 

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